

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1910.

No. 67.

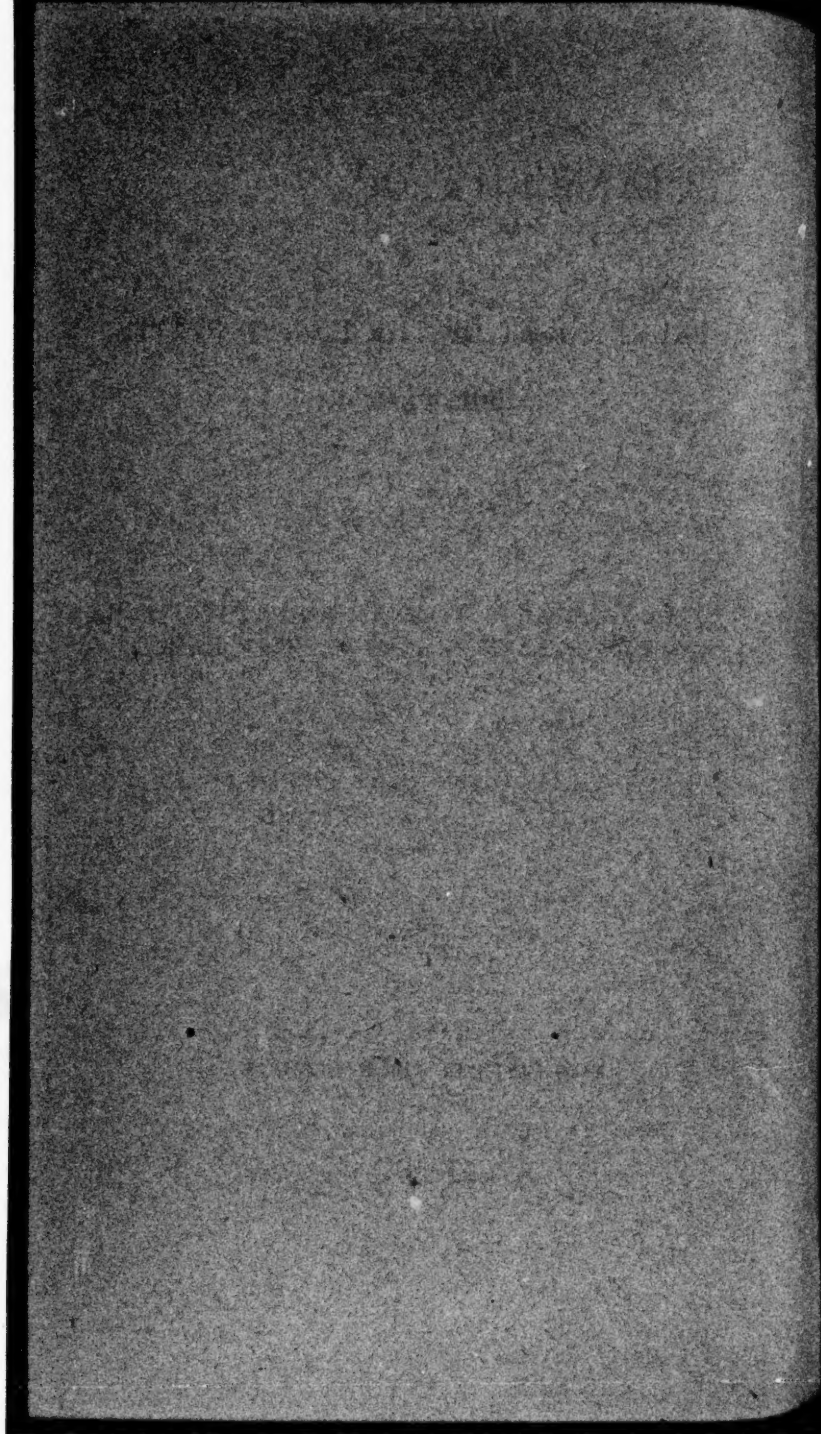
THE TITLE GUARANTY & TRUST COMPANY OF SCRANTON,
PENNSYLVANIA, PLAINTIFF IN ERROR,

THE CRANE COMPANY, F. R. BATES AND T. S. CLARK,
CO-PARTNERS AS BATES & CLARK COMPANY, ET AL.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE FIFTH CIRCUIT.

FILED SEPTEMBER 15, 1909.

(21,332.)



(21,332.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 254.

THE TITLE GUARANTY & TRUST COMPANY OF SCRANTON, PENNSYLVANIA, PLAINTIFF IN ERROR,

vs.

THE CRANE COMPANY, F. R. BATES AND T. S. CLARK, COPARTNERS AS BATES & CLARK COMPANY, ET AL.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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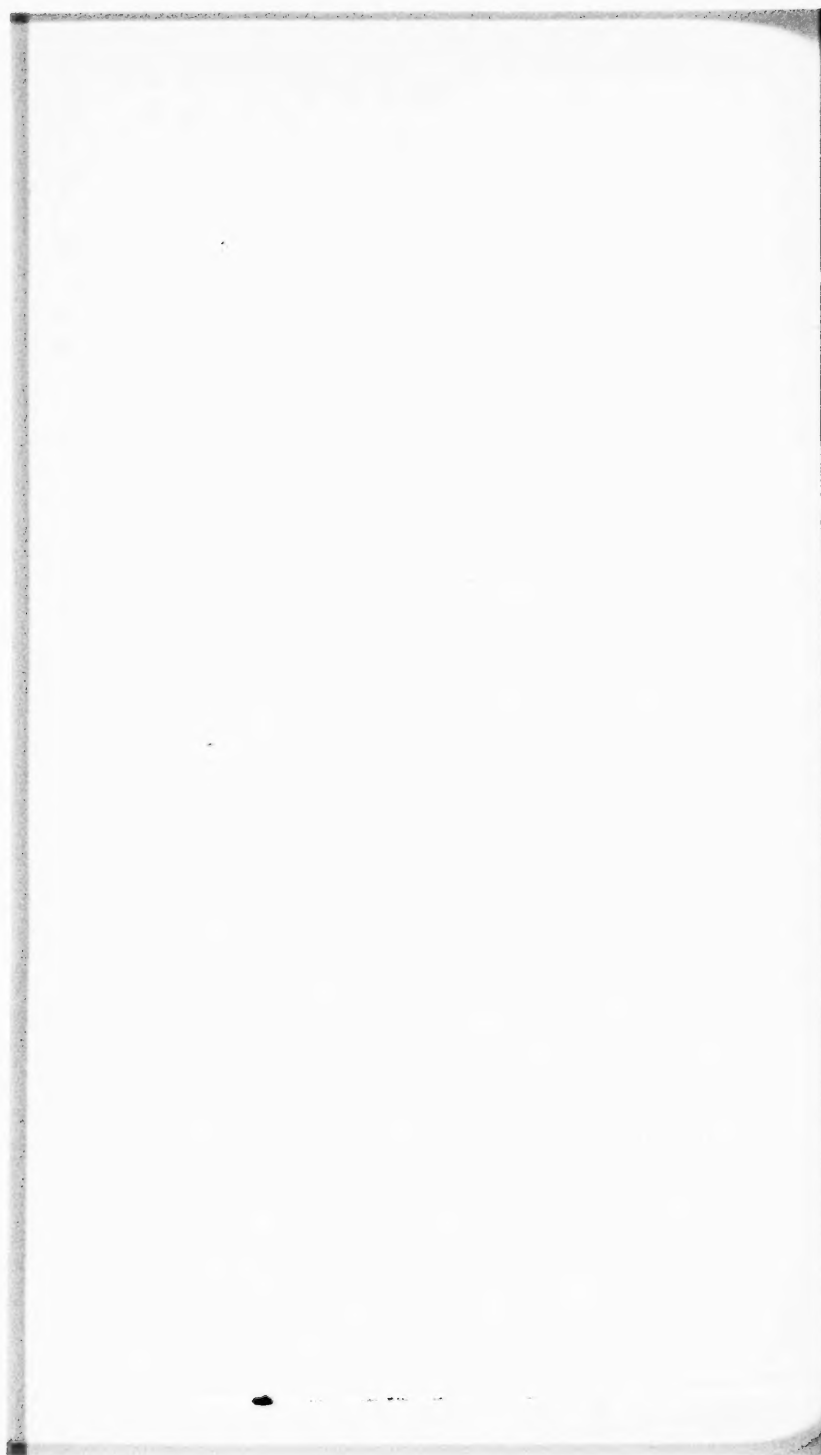
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a No. 1451.

United States Circuit Court of Appeals for the Ninth Circuit.

THE TITLE GUARANTY AND TRUST COMPANY OF SCRANTON, PENN-
SYLVANIA, Appellant and Plaintiff in Error,

vs.

THE CRANE COMPANY (a Corporation) et al., Appellees and Defend-
ants in Error.

Transcript of Record.

Upon Appeal from and upon Writ of Error to the United States
Circuit Court for the Western District of Washington, Northern
Division.

1 In the United States Circuit Court for the Western District
of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COM-
PANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and
Title Guaranty and Trust Company of Scranton, Pennsylvania
(a Corporation), Defendants.

OLYMPIC FOUNDRY COMPANY (a Corporation), Intervenor.

*Order Extending Time for Filing Record on Writ of Error and
Appeal.*

Upon application and good cause being shown, it is by the Court
ordered that the time for filing the record on appeal and writ of
error in the above-entitled cause with the Clerk of the Circuit
2 Court of Appeals be and the same is hereby, extended to and
including the 30th day of April, 1907.

Dated this 2d day of April, 1907.

C. H. HANFORD,

*United States District Court Judge Presiding
over the Above-entitled Court.*

[Endorsed:] No. 1412. In the United States Circuit Court for the
Western District of Washington, Northern Division. United States
ex rel. Crane Company (a Corporation), vs. Puget Sound Engine
Works, a Corporation, and Title Guaranty and Trust Company of
Scranton, Penna. (a Corporation). Order Extending Time for
Filing Record on Writ of Error and Appeal. Filed in the U. S.
Circuit Court, Western Dist. of Washington. Apr. 2, 1907. A.

Reeves Ayres, Clerk. R. M. Hopkins, Dep. Graves, Palmer & Murphy, Seattle, Wash., Attorneys for Dft. Title Guaranty & Trust Company.

No. 1451. United States Circuit Court of Appeals for the Ninth Circuit. Filed Apr. 8, 1907. F. D. Monekton, Clerk.

3 In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and The Title Guaranty and Trust Company of Scranton, Pennsylvania (a Corporation), Defendants.

Complaint.

Comes now the plaintiff and for the use and benefit of Crane Company, a corporation, for a cause of action against the defendants states:

I.

That Crane Company is, and at all times referred to in this complaint was, a corporation organized and existing under and by virtue of the laws of the State of Illinois, and during all said times was, and still is, transacting business in the city of Seattle, State of Washington.

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II.

That the defendant, Puget Sound Engine Works, Incorporated, is and at all times referred to in this complaint was, a corporation organized under the laws of the State of Washington with its principal place of business at Seattle, in said State.

III.

That the defendant, The Title Guaranty and Trust Company of Scranton, Pennsylvania, is, and at all times referred to in this complaint was, a corporation organized under the laws of the State of Pennsylvania, and duly authorized to transact a surety business in the State of Washington.

IV.

That on or about the 17th day of February, A. D. 1905, the defendant, Puget Sound Engine Works, Inc., entered into a certain contract in writing, with one F. A. Grant, captain and quartermaster of the United States Army, acting for and in behalf of the United States of America, wherein and whereby the said Puget Sound Engine Works, Inc., agreed to furnish all the material and labor required for and to construct, build and deliver to the United States,

free from encumbrances, one single screw, wooden steamer, with engines, boilers, machinery, tackle, apparel, furniture, etc., in accordance with certain specifications thereunto made and furnished, which said vessel was, and is, known as the steamer "Lieut. George M. Harris," and which said contract was to be performed in Seattle, Washington, and was duly approved by the Quartermaster General of the United States Army.

V.

That in compliance with law, the defendants Puget Sound Engine Works, Inc., and The Title Guaranty and Trust Company of Scranton, Pennsylvania, executed and delivered to the United States of America, by and through F. A. Grant, captain and quartermaster of the United States Army, stationed at Seattle, Washington, their certain construction bond, wherein and whereby the said defendants agreed that the said Puget Sound Engine Works, Inc., should fully perform the agreements and covenants and conditions contained in said contract for the construction of the said steamer, and further especially agreed and provided that the said Puget Sound Engine Works, Inc., should promptly make full payments to all persons supplying it labor and material in the transaction of the work provided for in said contract and that then the said obligation and bond should be void and of no effect, otherwise to remain in full force and virtue; that said bond was duly executed and delivered by the defendants herein, on the 27th day of February, A. D. 1905.

VI.

That between the dates of the third day of June, 1905, and the fifteenth day of Sept., 1905, inclusive, the said Crane Company, at the special instance and request of the said Puget Sound Engine Works, Inc., furnished and delivered to the said Puget Sound Engine Works, Inc., certain goods, wares, merchandise and material for use, and which was used by the said Puget Sound Engine Works, Inc., in the construction of the said steamer "Lieut. George M. Harris."

VII.

That the reasonable value of the said goods, wares and merchandise so furnished by said Crane Company, and so used by the said Puget Sound Engine Works, Inc., in the construction of the said steamer "George M. Harris" was, and is, the sum of twelve hundred fifty-seven dollars and eighty-two cents (\$1257.82), no part of which has been paid except the sum of sixty-two dollars and ninety-four cents (\$62.94), and that there is still due and owing to the said Crane Company for such material so furnished and used, the sum of eleven hundred ninety-four dollars and eighty-eight cents (\$1194.88).

VIII.

That the said work of the construction of the said steamer "George M. Harris" was finally completed on the 22d day of September, A.

7 D. 1905, and that no action has been brought on said bond by the United States of America, and that more than six months have elapsed since the final completion of said work of construction of said steamer, as provided for in said contract.

Wherefore, plaintiff asks judgment against the defendants, and each of them, for the use and benefit of Crane Company, a corporation, in the sum of eleven hundred ninety-four dollars and eighty-eight cents (\$1194.88), with its costs and disbursements herein.

H. T. GRANGER,
Attorney for Plaintiff.

STATE OF WASHINGTON,
County of King, ss:

I, J. W. Chilton, being first duly sworn, on oath deposes and says: That I am the cashier of Crane Company, a corporation named in the above-entitled action; that I have heard the foregoing complaint read and know the contents thereof, and that I believe the same to be true.

J. W. CHILTON.

Subscribed and sworn to before me this 25 day of May, 1906.

[SEAL.]

R. W. EMMONS,
*Notary Public in and for the State of Washington,
Residing at Seattle.*

[Endorsed:] Complaint. Filed in the U. S. Circuit Court, Western Dist. of Washington. May 25, 1906. A. Reeves Ayres,
8 Clerk. H. M. Walthew, Dep.

Affidavit of Publication of Notice to Creditors.

STATE OF WASHINGTON,
County of King, ss:

S. P. Weston, being first duly sworn, deposes and says: That he is and was at all the times herein mentioned business manager of the "Post-Intelligencer" Company which during all of said times was and is a corporation engaged in business as owner, printer and publisher of the Seattle "Post-Intelligencer," a daily newspaper printed in the city of Seattle in the county of King in the State of Washington; that the same is a newspaper of general circulation in said city, county and State, and that the annexed notice was published in said paper and not in a supplement thereof, and is a true copy of said notice as it was published in each regular and entire issue of said paper, for 21 times commencing on the 28th day of May, 1906, and ending on the 17th day of June, 1906, viz., May 28, 29, 30, 31, June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 1906, and that the said newspaper was regularly published and distributed to its subscribers during all of said period.

S. P. WESTON.

9 Subscribed and sworn to before me this 17th day of June, 1906.

[SEAL.]

E. S. JOHNSON,
*Notary Public in and for the State of
Washington, Residing at Seattle, Wash.*

[Endorsed:] Proof of Publication of Notice to Intervenor. Filed in the U. S. Circuit Court, Western Dist. of Washington, Feb. 4, 1907. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and
The Title Guaranty and Trust Company of Scranton, Pennsylvania (a Corporation), Defendants.

10 *Notice to Creditors of Pendency of Cause, etc.*

United States of America to the creditors of Puget Sound Engine Works, Incorporated, who furnished labor and material entering into the construction of the steamer "Lieut. George M. Harris," and to all whom it may concern:

You are hereby notified that the above-entitled cause is now pending in the above-entitled court, and that therein the plaintiff seeks to recover of and from the defendants the sum of eleven hundred ninety-four dollars and eighty-eight cents (\$1194.88) and costs, upon the bond executed and delivered by the defendants to the United States to secure the performance of a contract of the defendant, Puget Sound Engine Works, Inc., for the construction of the steamer "Lieut. George M. Harris."

You and each of you are hereby further notified that you are entitled to intervene in said cause and therein present and file your claim, if any you have, against said bond for material or labor so furnished.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 26th day of May, 1906, and in the 130th year of the Independence of the United States of America.

Attest:

[SEAL.]

A. REEVES AYRES, *Clerk.*
By R. M. HOPKINS, *Deputy Clerk.*

- 11 In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and The Title Guaranty and Trust Company of Scranton, Pennsylvania (a Corporation), Defendants.

OLYMPIC FOUNDRY COMPANY (a Corporation), SCHWABACHER Hardware Company (a Corporation), Gorham Rubber Company (a Corporation), George B. Adair, Henry R. Worthington, B. D. Bates, and R. O. Fraser, Copartners, Doing Business as Puget Sound Pattern Works; J. G. Meacham and W. J. Pinard, Copartners, Doing Business as Meacham & Pinard, Intervenor.

- 12 *Complaint in Intervention of Olympic Foundry Company.*

Comes now the above-named Olympic Foundry Company, intervenor, leave of Court having been first duly obtained, and for cause of action against the defendants, and each of them, states:

1. That intervenor, Olympic Foundry Company, is, and at all the times referred to in this complaint was, a corporation organized and existing under and by virtue of the laws of the State of Washington, and during all of said times was and still is transacting a business in said State of Washington, with principal place of business in the city of Seattle in the State of Washington.

2. That defendant, Puget Sound Engine Works, Incorporated, is, and at all the times referred to in this complaint in intervention was, a corporation duly organized and existing under the laws of the State of Washington, with its principal place of business at Seattle, in said State and District aforesaid.

3. That defendant, Title Guaranty and Trust Company of Scranton, Pennsylvania, is, and at all the times referred to in this complaint was, a corporation organized under the laws of the State of Pennsylvania, and duly authorized to transact business as sole surety in the State of Washington.

- 13 4. That on or about the 17th day of February, 1905, the defendant, Puget Sound Engine Works, Inc., entered into a certain contract in writing, with one F. A. Grant, captain and quartermaster of the United States Army, acting for and on behalf of the United States of America, wherein and whereby the said Puget Sound Engine Works, Inc., agreed to furnish all of the material and labor required for, and to construct, build, and deliver to the United States, free from encumbrance, one single screw, wooden steamer, with engines, boilers, machinery, tackle, apparel, furniture, etc., in accordance with certain specifications thereunto made and fur-

nished, which said vessel was and is known as the steamer "Geo. M. Harris," and which said contract was to be performed in Seattle, Washington, and was duly approved by the Quartermaster General of the United States Army, a copy of which contract is in the possession of each of the defendants herein.

5. That in compliance with the law, the Puget Sound Engine Works, Inc., and Title Guaranty and Trust Company of Scranton, Pennsylvania, made, executed and delivered to the United States of America, by and through F. A. Grant, Captain and Quartermaster of the United States Army, stationed at Seattle, Washington, their certain construction bond, wherein and whereby the said de-

fendants agreed that the said Puget Sound Engine Works,

14 Inc., should fully and faithfully perform the agreements and covenants contained in said contract, for the construction of said steamer, and further especially agreed and provided that the said Puget Sound Engine Works, Inc., should properly make full payments to all persons supplying it labor and material, in the transaction of the work provided for in said contract, in the construction of said steamer, and that then the said obligation and bond should be void and of no effect; otherwise, to remain in full force and virtue; that said bond was duly executed and delivered by the defendants herein on the 27th day of February, 1905, and a copy of said bond, so executed, is in possession of each of the defendants herein.

6. That between the dates of May 2, 1905, and the 2d day of September, 1905, inclusive, the said Olympic Foundry Company, intervenor, herein, at the special instance and request of the said Puget Sound Engine Works, Inc., defendant herein, furnished and delivered to the said Puget Sound Engine Works, Inc., defendant herein, certain goods, wares, merchandise and material for use, and which was used by the said Puget Sound Engine Works, Inc., defendant herein, in the construction of the said steamer, "Geo. M. Harris," and an itemized bill of the items so furnished is now in the possession of defendants herein, and each of them.

15 7. That the reasonable value of said goods, wares and merchandise so furnished by the said intervenor, Olympic Foundry Company, a corporation, and so used by the said Puget Sound Engine Works, Inc., in the construction of the steamer "Geo. M. Harris," was and is the sum of \$852.91, no part of which has been paid, except as follows:

January 6, 1906, dividend through bankruptcy proceedings.	\$42.64
May 17, 1906, second dividend through bankruptcy proceedings	39.23
Total	<u>\$81.87</u>

That there is still due and owing to said intervenor, Olympic Foundry Company, a corporation, for said material so furnished and used, the sum of \$771.04.

8. That the said work of the construction of the said steamer "Geo. M. Harris," was finally completed on the 22d day of Septem-

ber, 1905, and no action has been brought on said bond by the United States of America, and that more than six months have elapsed since the final completion of said work of construction of said steamer "Geo. M. Harris," as provided in said contract.

Wherefore intervenor asks judgment against defendants and each of them in the sum of \$771.04, together with legal
16 interest from the 2d day of September, 1905, and costs and disbursements herein.

GRAY & STERN,
*Attorneys for Olympic Foundry Com-
pany, a Corporation, Intervenor.*

UNITED STATES OF AMERICA,
Western District of Washington, County of King, ss:

F. D. Moore, being duly sworn, on oath, deposes and says:

I am an officer of the Olympic Foundry Company, a corporation, to wit, its secretary, intervenor in the above-entitled action; I have read the foregoing complaint in intervention, know the contents thereof, and I believe the same to be true.

F. D. MOORE.

Subscribed and sworn to before me this 4th day of June, 1906.

[SEAL.]

I. H. JENNINGS,
*Notary Public in and for the State of
Washington, Residing at Seattle.*

Service by receipt of copy of within complaint in intervention acknowledged this 4th day of June, 1906.

H. T. GRANGER,
Attorney for Plaintiff.
GRAVES, PALMER & MURPHY,
*Attorneys for Defendant Title
Trust and Guaranty Company.*

17 [Endorsed:] Complaint in Intervention of Olympic Foundry Co. Filed in the U. S. Circuit Court, Western Dist. of Washington, Jun. 6, 1906. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and The Title Guaranty and Trust Company, of Scranton, Pennsylvania (a Corporation), Defendants.

EYRES TRANSFER CO. (a Corporation), Intervenor.

Complaint in Intervention of Eyres Transfer Co., a Corporation.

Comes now Eyres Transfer Co., a corporation, intervenor, leave of Court having been duly had and obtained, and for cause of action against the defendants, the Puget Sound Engine Works, incorporated, a corporation, and The Title Guaranty and Trust Company of Scranton, Penna., corporation, and each of them alleges:

I.

That at all the times hereinafter mentioned in this complaint in intervention the intervenor was and now is a corporation, organized and existing under and by virtue of the laws of the State of Washington, and having its principal office and place of business in the city of Seattle, in said district aforesaid.

II.

That at all the times mentioned in this complaint in intervention the defendant, Puget Sound Engine Works, incorporated, was a corporation duly organized and existing under and by virtue of the laws of the State of Washington, having its principal office and place of business in Seattle, in said state and district aforesaid.

III.

That at all the times in this complaint in intervention mentioned the defendant, The Title Guaranty and Trust Company of Scranton, Penna., was and now is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and at all of said times was and now is duly authorized to transact business as a surety company in the State of Washington, under and in pursuance of the laws of the State of Washington.

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IV.

That on or about the 17th day of February, 1905, the defendant, Puget Sound Engine Works, incorporated, a corporation, entered into a certain contract in writing with one F. A. Grant, Captain and Quartermaster of the United States Army, acting for and in behalf

of the United States of America, wherein and whereby the said Puget Sound Engine Works, incorporated, a corporation, agreed to furnish all the material and labor required for, and to construct, build and deliver to the United States, free from encumbrance, one single screw, wooden steamer, with engines, boilers, machinery, tackle, apparel, furniture, etc., in accordance with certain specifications thereunto made and furnished, which said vessel was and is known as the steamer "Geo. M. Harris," and which said contract was to be performed in Seattle, Washington, and was duly approved by the Quartermaster General of the United States Army, a copy of which contract is in the possession of the defendants herein, and each of them.

V.

That in compliance with the law, the Puget Sound Engine Works, incorporated, a corporation, and the Title Guaranty and Trust Company of Scranton, Penna., a corporation, made, executed, and delivered to the United States of America, by and through F. A. Grant,

20 Captain and Quartermaster of the United States Army, stationed at Seattle, Washington, their certain construction bond, wherein and whereby the said defendants agreed that the said Puget Sound Engine Works, incorporated, a corporation, should fully and faithfully perform the agreements and covenants contained in said contract, for the construction of said steamer, and further especially agreed and provided that the said Puget Sound Engine Works, incorporated, a corporation, should promptly make full payments to all persons supplying it labor and material, in the transaction of the work provided for in said contract, in the construction of said steamer, and that then the said obligation and bond should be void and of no effect; otherwise to remain in full force and virtue; that said bond was duly executed and delivered by the defendants herein on the 27th day of February, 1905, and a copy of said bond, so executed, is in possession of each of the defendants herein.

VI.

That the said Eyres Transfer Company, a corporation, intervenor herein, at the special instance and request of the Puget Sound Engine Works, incorporated, a corporation, one of the defendants herein, performed for the said defendant, in the City of Seattle, King County, Washington, on the following dates, the following services

21 in the way of cartage of material to the said steamer "Geo. M. Harris," and paid the following sums for freight upon material to be used in said steamer and which was carted to said steamer as herein stated, said cartage being reasonable value hereinafter set forth, which said reasonable value, the said defendant, Puget Sound Engine Works, incorporated, a corporation, promised and agreed to pay to plaintiff therefor:

Date. 1905.	No. pkgs.		Freight charges.	Cartage.
22			1.60	
6-1		9 Steel Cast., N. P. to P. S. E. Wks.		.75
6-3		1 Casting, C. Ham to Shop.		.50
		2 Pat-ns, A. Pat. Shop to Works.		.50
6-5		1 Bdl. Plate, Morans to P. S. E. Wks.		3.00
6-6		1 Ld. Machinery		2.50
6-10		1 Shaft, P. S. E. Wk. to Gal. Dock)		2.00
		1 Chain, Gal. Dk. to P. S. E. Wk.)		
		1 Propeller Nut, Gal. Dk. to P. S. E. Wk.)		.50
		1 Shaft, Gal. Dk. to V. S. S. Gedney		.25
		1 Pkg. Packing, Gal. Dk. to N. P. Exp.		.50
6-15		1 Bx. Patterns, Gal. Dk. to N. P. Exp.	2.25	1.00
6-16		4 Castings, N. P. to P. E. Wks.		2.50
		1 Hoist, P. S. E. Wk. to Col. Dock		
23				
		3 Bls. Type (Press) Pier 5 to Lew A. Co.)		
		16 Beer Cases, Pier 5 to Orpheum Sal)		2.00
		2 Boxes, Pier 5 to Orpheum Sal)		
6-21		8 Pes. Iron, P. S. E. W. to Pier 5)		
		8 Pes. Iron, Pier 6 to P. S. E. Wk.)		.75
		1 Crt. Engine, Meteor, to P. S. E. Wk.	2.05	1.00
6-24		1 Bbl. Cement, G. & B. to P. S. E. Wk.		.50
6-27		4 Pumps, Unatilla, to P. S. E. Wk.	2.16	1.00
7-3		6 Crt. Gas Engines, G. N. to P. S. E. Wk.	3.20	1.50
7-6		2 Ld. Machinery, P. S. E. W. to Ft. King		5.50
7-7		1 Laythe, H. H. M. Co. to P. S. E. Wks.		
7-11		1 Laythe, P. S. E. Wks. to H. H. M. Co.		3.00

Date. 1903.	No. pkgs.		Feight charges.	Cartage.
7-14	1	Pc. Machinery, P. S. E. Wks. to Dock.	....	2.50
7-18	1	Compass, G. N. to P. S. E. Co.	2.60	.25
24				
7-19	2	Ex. Copper Pipe, P. S. E. Wk. to Interb.)	....	.75
	1	Forge, P. S. E. Wk. to Interb.)	....	....
	1	Machine, Pier A, to P. S. E. Wk.)	....	1.50
	1	Machine, Pier A, to P. S. E. Wk.)	....	....
	11	Cls. Rope, G. N. to P. S. E. Wks.	38.96	.75
8-1	1	Bdl. Bolts, P. S. E. Wks. to N. P.	....	.25
8-2	3	Pcs. Brass Fxt., P. S. E. Wks. to Interb.	....	.50
8-8	4	Collars, P. S. E. Wks. to Flyer Dk.	....	.50
8-9	6	Pcs. Pipe, Flyer Dock to P. S. E. Co.	.80	.50
	1	Forge, Interb. to P. S. E. Co.	.25	.50
		Carried forward	53.87	37.25
				\$37.25
8-10	6	Frames, P. S. E. Wks. to Nelson.	....	\$53.87
8-11	2	Pc. Cop. Pipe, Flyer, to P. S. E. Wk.	.50	.50
8-16	31	Pc. Fittings, J. Fin. to P. S. E.	....	.75
25				
8-17	1	Pc. Cop. Pipe, Flyer to P. S. E.	.45	.25
8-21	2	Pc. Pipe, Flyer, to P. S. E.	.50	.50
	8	Iron Plates P. S. E. Wks. to P. S. E.	....	.25
8-30	1	Engine, P. S. E. Wk. to Dock.	....	1.00
9-6	1	Pc. Machinery, P. S. E. Wk. to Pier 6.	....	.25

9-12	4	Pc. acinery, Pier 6 to P. S. E. Wks.....	....
9-15	1	Pkg. Bushing, C. Found, to P. S. E. Wks.....	....
9-22	2	Emry. Wheels, P. S. E. to Star Mach.....	....
	8	Pes. Machinery, P. S. E. to B. M. Shop.....	....
10-13	5	Castings, P. S. E. to Pier A.....	....
			<hr/>	\$55.32
				\$43.50
				<hr/>
				\$98.82

VII.

That no part thereof has been paid, except as follows:

January 6, 1906, Dividend No. 1 in bankruptcy proceedings.	\$4.94
May 12, 1906, Dividend No. 2 in bankruptcy proceedings.	4.54
Total	\$9.48

VIII.

That the said work of construction of the said steamer "Geo. M. Harris" was finally completed on the 22d day of September, 1905, and no action has been brought on said bond by the United States of America, and that more than six months have elapsed since the final completion of said work of construction of said steamer "Geo. M. Harris," as provided in said contract.

Wherefore, the intervenor, Eyres Transfer Co., a corporation, demands judgment against the defendants, Puget Sound Engine Works, incorporated, a corporation, and The Title Guaranty and Trust Company of Scranton, Penna., a corporation, and each of them, in the sum of eighty-nine and 34/100 dollars (\$89.34), with interest thereon at the legal rate from the date of the commencement of this action, and costs and disbursements herein.

McCLURE & McCLURE,
*Attorneys for Eyres Transfer Co.,
a Corporation, Intervenor.*

27 UNITED STATES OF AMERICA,
Western District of Washington, ss:

Walter Eyres, being first duly sworn, on oath says; I am one of the general officers, to wit, the president of Eyres Transfer Co., a corporation, the intervenor, above named, and make this affidavit by way of verification of the foregoing complaint in intervention for the reason that said intervenor is a corporation, and I am such general officer; I have read the foregoing complaint in intervention, know the contents thereof and believe the same to be true.

W. EYRES.

Subscribed and sworn to before me this 27th day of June, 1906.

WM. E. McCLURE,
*Notary Public in and for the State of
Washington, Residing at Seattle.*

[Endorsed:] Complaint in Intervention of Eyres Transfer Co., a Corporation. Filed in the U. S. Circuit Court, Western Dist. of Washington, Jun. 28, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

28 In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and The Title Guaranty and Trust Company of Scranton, Pennsylvania (a Corporation), Defendants.

Olympic Foundry Company (a Corporation), Schwabacher Hardware Company (a Corporation), Gorham Rubber Company (a Corporation); George B. Adair, Henry A. Worthington, B. D. Bates, and R. O. Fraser, Copartners Doing Business as Puget Sound Pattern Works; J. G. Meacham and W. J. Pinard, Copartners Doing Business as Meacham & Pinard; Pacific Engineering Company (a Corporation), Dunham, Carrigan & Hayden Company (a Corporation), Intervenors.

29 *Complaint in Intervention of Dunham, Carrigan & Hayden Company, a Corporation, Intervenor.*

Comes now the above-named Dunham, Carrigan & Hayden Company, a corporation, intervenor, leave of Court having been first duly obtained, and for cause of action against defendants and each of them, states:

I.

That intervenor, Dunham, Carrigan & Hayden Company, is and at all the times referred to in this complaint in intervention was a corporation duly organized and existing under and by virtue of the laws of the State of California, and during all of said times was and still is transacting business in the State of Washington, at Seattle, in said State.

II.

That defendant, Puget Sound Engine Works, incorporated, is, and at all the times referred to in this complaint in intervention was a corporation duly organized and existing under and by virtue of the laws of the State of Washington, with its principal place of business at Seattle, in said State aforesaid.

III.

That defendant, Title Guaranty and Trust Company of Scranton, Pennsylvania, is, and at all the times referred to in this complaint was a corporation organized under the laws of the State of Pennsylvania, and duly authorized to transact business as sole surety, in the State of Washington.

IV.

That on or about the 17th day of February, 1905, the defendant, Puget Sound Engine Works, Inc., entered into a contract in writing, with one F. A. Grant, Captain and Quartermaster of the United States Army, acting for and on behalf of the United States of America, wherein and whereby the said Puget Sound Engine Works, Inc., agreed to furnish all of the material and labor required for, and to construct, build and deliver to the United States, free of encumbrance, one single screw, wooden steamer, with engines, boilers, machinery, tackle, apparel, furniture, etc., in accordance with certain specifications thereunto made and furnished, which said vessel was and is known as the steamer "Geo. M. Harris," and which said contract was to be performed in Seattle, Washington, and was duly approved by the Quartermaster General of the United States Army, a copy of which contract is in the possession of each of the defendants herein.

V.

That in compliance with the law, the Puget Sound Engine Works, Inc., and the Title Guaranty and Trust Company of Scranton, Pennsylvania, made, executed and delivered to the United States of America, by and through F. A. Grant, Captain and Quartermaster of the United States Army, stationed at Seattle, Washington, their certain construction bond, wherein and whereby the said defendants agreed that the said Puget Sound Engine Works, Inc., should fully and faithfully perform the agreements and covenants contained in said contract for the construction of said steamer, and further especially agreed and provided that the said Puget Sound Engine Works, Inc., should promptly make full payments to all persons supplying it with labor and material, in the transaction of the work provided for in said contract, in the construction of said steamer, and that then the said obligation and bond should be void and of no effect; otherwise, to remain in full force and virtue; that said bond was duly executed and delivered by the defendants herein on the 27th day of February, 1905, and a copy of said bond so executed is in the possession of each of the defendants herein.

VI.

That between the dates of May 24, 1905, and August 29, 1905, inclusive, said Dunham, Carrigan & Hayden Company, a corporation Intervenor herein, at the special instance and request of the Puget Sound Engine Works, Inc., defendants herein, furnished to the said Puget Sound Engine Works, Inc., defendant herein, certain goods, wares, merchandise and material for use, and which was used by the said Puget Sound Engine Works, Inc., defendant herein, in the construction of the steamer "Geo. M. Harris," and an itemized bill of the items so furnished is in the possession of the defendants and each of them.

VII.

That the reasonable value of said goods, wares and materials so furnished by the said intervenor, Dunham, Carrigan & Hayden Com-

pany, a corporation, and so used by the Puget Sound Engine Works, Inc., in the construction of the steamer, "Geo. M. Harris," was and is the sum of \$88.45, no part of which has ever been paid except as follows: January 6, 1906, dividend through bankruptcy proceedings, \$4.30; May 17, 1906, second dividend through bankruptcy proceedings, \$3.95; that there is still due and owing to said Intervenor, Dunham, Carrigan & Hayden Company, for said material so furnished, and used, the sum of \$80.20.

And for a second and further cause of action against the defendants and each of them, intervenor, Dunham, Carrigan & Hayden Company, a corporation, states:

1. That intervenor adopts paragraph one (1), two (2), three (3), four (4), five (5) of its first cause of action herein, as fully as if the same were set out at length herein.

2. That at and between the dates of May 1st, 1905, and
33 September 12th, 1905, inclusive, F. H. Schroeder, doing business under the firm name and style of F. H. Schroeder & Company, of Seattle, Washington, at the special instance and request of the Puget Sound Engine Works, Inc., defendant herein, furnished and delivered to the said Puget Sound Engine Works, Inc., defendant herein, certain goods, wares, merchandise and material, and labor in the preparation thereof, for use and which was used by the said Puget Sound Engine Works, Inc., defendant herein, in the construction of the steamer "Geo. M. Harris," and an itemized bill of the items so furnished is now in the possession of defendants and each of them.

3. That the reasonable value of said goods, wares and materials, with the labor furnished in preparing same, by the said F. H. Schroeder, doing business as F. H. Schroeder & Company, and so used by the Puget Sound Engine Works, Inc., defendant herein, in the construction of the steamer, "Geo. M. Harris," was and is the sum of \$247.17, no part of which has ever been paid, except as follows: January 6th, 1906, dividend through bankruptcy, \$12.35; May 17, 1906, second dividend through bankruptcy proceedings, \$11.37; that there is still due and owing thereon, for said materials and labor so furnished and used, the sum of \$223.45.

4. That the said F. H. Schroeder, doing business as F. H.
34 Schroeder & Company, has sold, transferred and assigned, in writing, said indebtedness, and all his rights thereunder to intervenor herein, Dunham, Carrigan & Hayden Company, a corporation.

5. That the said work of the construction of the said steamer "Geo. M. Harris," was finally completed on the 22d day of September, 1905, and no action has been brought on said bond by the United States of America, and that more than six months have elapsed since the final completion of said work of construction of said steamer, "Geo. M. Harris," as provided in said contract.

Wherefore, Intervenor, Dunham, Carrigan & Hayden Company demands judgment against defendants, and each of them, as follows, in the sum of \$80.20, with legal interest from the 29th day of August, 1905, upon its first cause of action, and in the sum of

\$223.45, with legal interest from the 14th day of September, 1905, upon its second cause of action, together with its costs and disbursements herein.

GRAY & STERN,
*Attorneys for Intervenor, Dunham,
Carrigan & Hayden Co.*

UNITED STATES OF WASHINGTON,
Western District of Washington, County of King, ss:

F. J. Speckert, being duly sworn, on oath deposes and says:
35 I am an officer of Dunham, Carrigan & Hayden Company, a corporation, to wit, its Cashier, at Seattle, Washington, intervenor in the above-entitled action; I have read the foregoing complaint in intervention, know the contents thereof and believe the same to be true.

F. J. SPECKERT.

Subscribed and sworn to before me this 7th day of June, 1906.

KING DYKEMAN,
*Notary Public in and for the State
of Washington, Residing at Seattle.*

Service of the within complaint in intervention by delivery of a copy to the undersigned is hereby acknowledged this 18th day of June, 1906.

H. T. GRANGER, *Attorney for Plaintiffs.*
GRAVES, PALMER & MURPHEY,
Att'ys for Defendant Title Guaranty & Trust Co.

[Endorsed:] Complaint in Intervention of Dunham, Carrigan & Hayden Co. Filed in the U. S. Circuit Court, Western Dist. of Washington, June 18, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

36 In the United States Circuit Court for the Western District of Washington, Northern Division.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and the Title Guaranty and Trust Company of Scranton, Penna. (a Corporation), Defendants.

OLYMPIC FOUNDRY COMPANY (a Corporation) et al., Intervenors.

Demurrer of Title Guaranty and Trust Company to Complaint.

Comes not the above-entitled defendant, the Title Guaranty and Trust Company, by its attorneys, the undersigned, and demurs to the plaintiff's complaint upon file herein, upon the following grounds and for the following reasons, to wit:

1st. That the said complaint does not state facts sufficient to constitute a cause of action.

2d. Because it does not appear from the face of the said complaint that all claims against said bond in favor of the United States have been paid.

37 3d. Because it does not appear from the fact of said complaint that prior to the commencement of said action the plaintiff applied for and procured a certified copy of the bond or undertaking declared upon and because said action is not predicated upon a certified copy of said obligation.

4th. Because there is a defect of parties defendant in that the United States of America is not made a party defendant to said action.

5th. Because it appears from the fact of said complaint that the material and service, the price of which is sought to be recovered, is not such material and service as comes within the class of material and service contemplated or provided for by statute governing and defining such bonds as is declared upon in this action.

6th. Because the statute providing for the taking of bonds by contractors contracting with the United States of America does not comprehend or contemplate the construction of a vessel and because the contract referred to in the plaintiff's complaint is not such a contract as comes within the provisions of that statute.

GRAVES, PALMER & MURPHY,
*Attorneys for Defendant Title Guaranty and
Trust Company of Scranton, Penna.*

38 UNITED STATES OF AMERICA,
Western District of Washington, ss:

Carroll B. Graves, being first duly sworn, on oath says: That he is one of the attorneys for the Title Guaranty and Trust Company, in the above-entitled action; that he has heard the foregoing demurrer read, and caused the same to be prepared and believes same to be meritorious and well founded in law, and that it is not interposed for delay.

CARROLL B. GRAVES.

Subscribed and sworn to before me this 13th day of Sept., A. D. 1906.

[SEAL.]

C. H. WINDERS,
*Notary Public in and for the State of
Washington, Residing at Seattle.*

Due service of the within demurrer acknowledged and a true copy received this 13th day of Sept., 1906.

H. T. GRANGER,
Attorney for Pl'tf.

[Endorsed:] Demurrer to complaint of U. S. A. ex rel. Crane Co. Filed in the U. S. circuit court, western dist. of Washington. Sept. 14, 1906. A. Reeves Ayres, Clerk. H. M. Walthew, dep.

39 In the United States Circuit Court for the Western District
of Washington, Northern Division.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE
COMPANY (a Corporation), Plaintiff,

VS.

PUGET SOUND ENGINE WORKS, Incorporated (a Corporation, and
the Title Guaranty and Trust Company of Scranton, Penna. (a
Corporation), Defendants.

OLYMPIC FOUNDRY COMPANY (a Corporation) et al. Intervenor.

*Demurrer of Defendant Title Guaranty and Trust Company of
Scranton, Penna., to Complaint in Intervention of Olympic
Foundry Company.*

Comes now the above-entitled defendant, the Title Guaranty and
Trust Company of Scranton, Penna., by its attorneys the under-
signed, and demurs to the complaint in intervention of Olympic
Foundry Company, upon file herein, upon the following grounds
and for the following reasons, to wit:

40 1st. That the said complaint in intervention does not state
facts sufficient to constitute a cause of action.

2d. Because it does not appear from the fact of the said complaint
in intervention that all claims against said bond in favor of the
United States have been paid.

3d. Because it does not appear from the face of said complaint
in intervention that prior to the commencement of the said action
the intervenor applied for and procured a certified copy of the bond
or undertaking declared upon, and because said action is not predi-
cated upon a certified copy of said obligation.

4th. Because there is a defect of parties defendant in that the
United States of America is not made a party defendant to said
action.

5th. Because it appears from the fact of said complaint in inter-
vention that the material and service, the price of which is sought
to be recovered, is not such material and service as comes within the
class of material and service contemplated or provided for by statute
governing and defining such bonds as is declared upon this action.

6th. Because the statute providing for the taking of bonds by
contractors contracting with the United States of America does not
comprehend or contemplate the construction of a vessel and

41 because the contract referred to in the intervenor's complaint
in intervention is not such a contract as comes within the
provisions of that statute.

GRAVES, PALMER & MURPHY,
*Attorneys for Defendant Title Guaranty and
Trust Co. of Scranton, Penna.*

UNITED STATES OF AMERICA.

Western District of Washington, ss:

Carroll B. Graves, being first duly sworn, on oath, says: That he is one of the attorneys for defendant Title Guaranty and Trust Company, in the above-entitled action; that he has heard the foregoing demurrer read, knows the contents thereof, and believes the same to be meritorious and well founded in law and not interposed for the purpose of delay.

CARROLL B. GRAVES.

Subscribed and sworn to before me this 13th day of Sept., A. D., 1906.

[SEAL.]

C. H. WINDERS,
*Notary Public in and for the State of
 Washington, Residing at Seattle.*

Due service of the within demurrer acknowledged and a true copy received this 14th day of Sept. 1906.

GRAY & STERN,
Attorneys for Olympic Foundry Co.

42 [Endorsed:] Demurrer to complaint of Olympic Foundry Co. Filed in the U. S. Circuit Court, Western Dist. of Washington. Sept. 14, 1906. A. Reeves Ayres, clerk. H. M. Walthew, dep.

In the United States Circuit Court for the Western District of Washington, Northern Division.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff.

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and the Title Guaranty and Trust Company of Scranton, Penna. (a Corporation), Defendants.

OLYMPIC FOUNDRY COMPANY (a Corporation) et al., Intervenor.

Demurrer of Defendant Title Guaranty and Trust Company of Scranton, Penna., to Complaint in Intervention of Eyres Transfer Company.

Comes now the above-entitled defendant, The Title Guaranty and Trust Company of Scranton, Penna., by its attorneys, the undersigned, and demurs to the complaint in intervention of

43 Eyres Transfer Company, a corporation, upon file herein, upon the following grounds and for the following reasons, to wit:

1st. That the said complaint in intervention does not state facts sufficient to constitute a cause of action.

2d. Because it does not appear from the face of the said complaint in intervention that all claims against the said bond in favor of the United States have been paid.

3d. Because it does not appear from the face of the said complaint in intervention that prior to the commencement of said action the intervenor applied for and procured a certified copy of the bond or undertaking declared upon, and because said action is not predicated upon a certified copy of said obligation.

4th. Because there is a defect of parties defendant in that the United States of America is not made a party defendant to said action.

5th. Because it appears from the face of said complaint in intervention that the material and services, the price of which is sought to be recovered, is not such material and service as comes within the class of material and service contemplated or provided for by statute governing and defining such bonds as is declared upon in this action.

6th. Because the statute providing for the taking of bonds by contractors contracting with the United States of America
44 does not comprehend or contemplate the construction of a vessel and because the contract referred to in the intervenor's complaint in intervention is not such a contract as comes within the provisions of that statute.

GRAVES, PALMER & MURPHY.

*Attorneys for Defe't Title Guaranty and
Trust Company of Scranton, Penna.*

UNITED STATES OF AMERICA.

Western District of Washington, ss:

James B. Murphy, being first duly sworn, on oath says: That he is one of the attorneys for defendant, Title Guaranty and Trust Company, in the above-entitled action; that he has heard the foregoing demurrer read, knows the contents thereof, and believes the same to be meritorious and well founded in law and not interposed for the purpose of delay.

JAMES B. MURPHY.

Subscribed and sworn to before me this 13 day of Sept., A. D. 1906.

[SEAL.]

C. H. WINDERS,
*Notary Public in and for the State of Washington,
Residing at Seattle, Washington.*

Due service of the within demurrer acknowledged and a true copy received this 14th day of Sept., 1906.

McCLURE & McCLURE,
Attorneys for Eyres Tr. Co.

45 [Endorsed:] Demurrer to Complaint of Eyres Transfer Co. Filed in the U. S. Circuit Court, Western District of Washington. Sept. 14, 1906. A. Reeves Ayres, Clerk. By H. M. Walthew.

In the United States Circuit Court for the Western District of Washington, Northern Division.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation, Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and The Title Guaranty and Trust Company of Scranton, Penna. (a Corporation), Defendants.

OLYMPIC FOUNDRY COMPANY (a Corporation) et al., Intervenor.

Demurrer of Defendant Title Guaranty and Trust Company of Scranton, Penna., to Complaint in Intervention of Dunham, Carrigan & Hayden Company.

Comes now the above-entitled defendant, The Title Guaranty and Trust Company of Scranton, Penna., by its attorneys, the undersigned, and demurs to the first account and cause of action in the complaint in intervention of Dunham, Carrigan & Hayden Company, a corporation, upon file herein, upon the following grounds and for the following reasons, to wit:

1. That the said complaint in intervention does not state facts sufficient to constitute a cause of action.

2. Because it does not appear from the face of the said complaint in intervention that all claims against said bond in favor of the United States have been paid.

3. Because it does not appear from the face of the said complaint in intervention that prior to the commencement of said action the intervenor applied for and procured a certified copy of the bond or undertaking declared upon, and because said copy is not predicated upon a certified copy of said obligation.

4. Because there is a defect of parties defendant in that the United States of America is not made a party defendant to said action.

5. Because it appears from the face of said complaint in intervention that the material and service, the price of which is sought to be recovered, is not such material and service as comes within the class of material and service contemplated or provided for by statute governing and defining such bonds as is declared in this action.

6. Because the statute providing for the taking of bonds by contractors contracting with the United States of America does not comprehend or contemplate the construction of a vessel and because the contract referred to in the intervenor's complaint in intervention is not such a contract as comes within the provisions of that statute.

And demurs to the second cause of action in the complaint in intervention of Dunham, Carrigan & Hayden Company, a corporation, upon the following grounds:

1. That the said second cause of action in said complaint in intervention does not state facts sufficient to constitute a cause of action.

2. Because it does not appear from the face of the said complaint in intervention that all claims against said bond in favor of the United States have been paid.

3. Because it does not appear from the face of the said complaint in intervention that prior to the commencement of said action the intervenor applied for and procured a certified copy of the bond or undertaking declared upon, and because said action is not predicated upon a certified copy of said obligation.

4. Because there is a defect of parties defendant in that the United States of America is not made a party defendant to said action.

5. Because it appears from the face of said complaint in
48 intervention that the material and service, the price of which is sought to be recovered, is not such material and service as comes within the class of material and service contemplated or provided for by statute governing and defining such bonds as is declared upon in this action.

6. Because the statute providing for the taking of bonds by contractors contracting with the United States of America does not comprehend or contemplate the construction of a vessel and because the contract referred to in the intervenor's complaint in intervention is not such a contract as comes within the provisions of that statute.

GRAVES, PALMER & MURPHY,
*Attorneys for Defendant Title Guaranty
and Trust Company of Scranton, Penna.*

UNITED STATES OF AMERICA,
Western District of Washington, ss:

James B. Murphy, being first duly sworn on oath, says: That he is one of the attorneys for Defendant, Title Guaranty and Trust Company, in the above-entitled action; that he has heard the foregoing demurrer read, knows the contents thereof, and believes the same to be meritorious and well founded in law and not interposed for the purpose of delay.

JAMES B. MURPHY.

49 Subscribed and sworn to before me 13 day of Sept. A. D.
1906.

[SEAL.]

C. H. WINDERS,
*Notary Public in and for the State
of Washington, Residing at Seattle.*

Due service of the within demurrer acknowledged and a true copy received this 14 day of Sept., 1906.

GRAY & STERN,
Attorneys for Dunham, Carrigan, etc., Co.

[Endorsed:] Demurrer to complaint of Dunham, Carrigan & Hayden Co. Filed in the U. S. Circuit Court, Western Dist. of Washington. Sept. 14, 1906. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

In the United States Circuit Court for the Western District of Washington, Northern Division.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and The Title Guaranty and Trust Company of Scranton, Penna. (a Corporation), Defendants.

50 *Order Overruling Demurrers of Title Guaranty and Trust Company to Complaints.*

Be it remembered that this cause came on duly and regularly for hearing on the 24th day of September, 1906, upon the demurrer of the Title Guaranty and Trust Company of Scranton, Penna., a corporation, to the complaint of the above-entitled plaintiff, Crane Company, a corporation, and upon a demurrer of the said Title Guaranty and Trust Company of Scranton, Penna., a corporation, to each of the following complaints in intervention, to wit: The complaint in intervention of the Washington Iron Works, a corporation, the complaint in intervention of Columbia Engineering Works, the complaint in intervention of A. H. Holstrom Iron Works, the complaint in intervention of Eyres Transfer Company, a corporation, the complaint in intervention of Sunde & Erland Company, a corporation, the complaint in intervention of Vulcan Iron Works, a corporation, the complaint in intervention of George Broom, the complaint in intervention of John E. Good Metal Works, the complaint in intervention of F. J. Flajole and G. F. Barritt, copartners doing business as Standard Boiler Works, the complaint in intervention of Dunham, Carrigan & Hayden Company, a corporation, the complaint in intervention of Charles H. Allmond and G. E. Ahlberg, copartners doing business as Charles H. Allmond & Company, the complaint in intervention of Davis & Buxbaum, copartners, under the firm name and style of Davis & Buxbaum, the complaint in intervention of Whiton Hardware Company, a corporation, the complaint in intervention of Bowles Company, a corporation, the complaint in intervention of The Marine Manufacturing and Supply Company, a corporation, the complaint in intervention of Puget Sound Machinery Depot, a corporation, the complaint in intervention of S. B. Hicks & Sons Company, a corporation, the complaint in intervention of J. G. Meacham and W. J. Pinard, copartners doing business as Meacham & Pinard, complaint in intervention of T. J. King and A. Winge, copartners doing business in the name of King & Winge, the complaint in intervention of Frederick & Nelson, a corporation, the complaint in intervention of Pacific Engineering Company, a corporation, the complaint in intervention of Olympic Foundry Company, a corporation, the complaint in intervention of Schabacher Hardware Company, a corporation, the complaint in intervention of Henry R. Worthington, the complaint in intervention of George B. Adair, the complaint in intervention of James Tracy and John Tracy, copartners doing business as the Eagle Brass Foundry, complaint in inter-

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vention of M. A. Bargar, doing business as M. A. Bargar & Co., the complaint in intervention of J. T. Fulmele, doing business as Eagle

- Iron Foundry, complaint in intervention of B. D. Bates and
 52 R. O. Fraser, copartners doing business as Puget Sound Pattern Works, the complaint in intervention of Westerman Iron Works, a corporation, complaint in intervention of James Johnson, the complaint in intervention of F. R. Bates and T. S. Clark, copartners doing business under the name and style of Bates & Clarke Company, complaint in intervention of B. Manke, complaint in intervention of Chesley Tow Boat Co., a corporation, complaint in intervention of Gorham Rubber Company, a corporation, the complaint in intervention of Lewis, Anderson, Foard Co., a corporation, the plaintiff appearing by its attorney H. T. Granger, The Title Guaranty & Trust Company of Scranton, Penna., appearing by its attorneys Graves, Palmer & Murphy, the intervenor Washington Iron Works, a corporation, appearing by its attorney Everett C. Ellis, the intervenors George B. Adair, Henry R. Worthington, Schwabacher Hardware Company, a corporation, Gorham Rubber Company, a corporation, Olympic Foundry Company, a corporation, J. G. Meacham and W. J. Pinard, copartners doing business as Meacham & Pinard, Charles H. Allmond and G. E. Ahlberg, copartners doing business as Charles H. Allmond & Company, Dunham, Carrigan & Hayden Company, a corporation, F. J. Flajole and G. E. Barritt, copartners doing business as Standard Boiler Works, and John E. Good
 53 Metal Works, appearing by their attorneys, Messrs. Gray & Stern, the intervenor George Broom appearing by his attorney George H. King, the intervenors L. W. Davis and J. H. Davis, copartners under the firm name and style of Davis & Buxbaum, and the Whiton Hardware Company, a corporation, appearing by their attorneys, Messrs. Wardell & Wardell, the intervenors Bowles Company, a corporation, The Marine Manufacturing and Supply Company, a corporation, Sunde & Erland Company, a corporation, and Eyres Transfer Company, a corporation, appearing by their attorneys, Messrs. McClure & McClure, the intervenor Puget Sound Machinery Depot, a corporation, appearing by its attorneys, Ira Bronson and D. B. Trefethen, the intervenor S. B. Hicks & Sons Company, a corporation, appearing by its attorney, S. H. Steele, the intervenors J. T. King and Winge, copartners, doing business in the name of King & Winge, and the Vulcan Iron Works, a corporation, appearing by their attorney Benton Embree, the intervenor Frederick & Nelson, a corporation, appearing by its attorneys, Messrs. Wright & Kelleher, the intervenor Pacific Engineering Company, a corporation, appearing by its attorneys Messrs. Kerr & McCord, the intervenor A. H. Holstrom Iron Works, appearing by its attorneys, A. A. Anderson and Howard M. Hall, the intervenors Columbia Engineering Works, a corporation, J. T. Fulmele, doing business as
 54 Eagle Iron Foundry, B. D. Bates and R. O. Fraser, doing business as Puget Sound Pattern Works and Westerman Iron Works, a corporation, appearing by their attorneys, Messrs. Gray & Stern, the intervenors James Tracy and John Tracy doing business as the Eagle Brass Foundry, appearing by its attorney, E. H. Flueck, the intervenor M. A. Bargar, doing business as M. A. Bargar &

Company, appearing by its attorneys Messrs. Cutts & Dorety, and the intervenors James Johnston, F. R. Bates and T. S. Clark, copartners doing business under the name and style of Bates & Clark Company, and B. Manke appearing by their attorney, H. T. Granger, the intervenors Lewis, Anderson, Ford Co. and Chesley Tow Boat Co., appearing by Allen, Allen & Stratton, and argument of counsel was had, and the court being fully advised in the premises now overrules the demurrer of the said Title Guaranty and Trust Company of Scranton, Penna., to the said complaint and its demurrer to each of the said complaints in intervention, to which ruling the said Title Guaranty and Trust Company hereby excepts and its exception is allowed, and the Title Guaranty and Trust Company is required to answer to the said complaint and to the several complaints in intervention within twenty days from date hereof.

Done in open court this 1st day of October, 1906.

C. H. HANFORD, *Judge.*

55 Due service of the within acknowledged and a true copy received this 29th day of Sept. 1906.

H. T. GRANGER,

Attorney for Plaintiff and Intervenors James Johnston et al.

Attorney for Wash. Iron Works.

GRAY & STERN (Sept. 9, '06),

Attorneys for George B. Adair, Henry R. Worthington, Schwabacher H'dw'e Co. et al.

GEO. H. KING,

By M. H. VAN NUYS,

Attorney for George Broom.

WARDALL & WARDALL,

Attorneys for L. W. Davis and J. H. Davis and the Whiton H'dw'e Co.

McCLURE & McCLURE,

Attorneys for Bowles & Co., The Marine Manufacturing and Supply Company, Eyres Transfer Co. and Sunde & Erland.

IRA BRONSON,

Attorney for Puget Sound Machinery Depot, S. B. Hicks & Sons Co., King & Winge and the Vulcan Iron Works.

WRIGHT & KELLEHER,

Attorneys for Frederick & Nelson.

KERR & McCORD,

Attorneys for Pacific Engineering Co.

A. A. ANDERSON,

Attorney for A. H. Holstrom Iron Works.

CUTTS & DORETY,

Attorney for M. A. Bargar & Co., Eagle Brass Foundry.

ALLEN, ALLEN & STRATTON,

Attorneys for Lewis, Anderson & Ford Co., Chesley Tow Boat Co.

[Endorsed:] Order Overruling Demurrer of Title Guaranty and Trust Co. Filed in the U. S. Circuit Court, Western Dist. of Washington. Oct. 1, 1906. A. Reeves Ayres, Clerk. R. M. Hopkins, Dep.

57 In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and The Title Guaranty & Trust Company of Scranton, Penna. (a Corporation), Defendants.

OLYMPIC FOUNDRY COMPANY (a Corporation) et al., Intervenors.

Answer of Title Guaranty and Trust Company of Scranton, Penna., to Complaint.

Comes now the Title Guaranty and Trust Company of Scranton, Penna., one of the defendants above named, and insisting upon the merits of its demurrer filed herein and not waiving any of the rights reserved to its use by the record in excepting to the Court's ruling upon said demurrer, the said defendant for answer to the complaint of the complainant herein denies and says as follows:

58

I.

Referring to paragraph V this defendant admits that it executed as surety to the United States of America a certain construction bond, wherein and whereby it agreed that its codefendant the Puget Sound Engine Works, Inc., should fully observe and perform all and singular the covenants, conditions and agreements contained in that certain contract for the construction of one steam propeller vessel known as the steamer "Lieutenant George M. Harris," and that said bond was further conditioned for the full payment by the said Puget Sound Engine Works to all persons supplying labor or materials in the prosecution of the work provided for in said contract, and further admits that said bond was duly executed and delivered on the 7th day of February, 1905, but denies each and every other allegation therein contained, and the whole thereof.

II.

Referring to paragraph VI this defendant has no knowledge or information as to the matters and things therein set forth sufficient upon which to base a belief, and consequently denies the same and each and every allegation therein contained, and the whole thereof.

III.

59

Referring to paragraph VII this defendant has no knowledge or information as to the matters and things therein set forth sufficient

upon which to base a belief, and consequently denies the same and each and every allegation therein contained, and the whole thereof; denies that goods, wares and merchandise were furnished by plaintiff as therein alleged, of the value of \$1257.82, or of any other value, or in any other manner, or at all, and denies that there is still due and owing to said plaintiff the sum of \$1194.88 as therein alleged, or any other sum, or sums, or upon any other account, or at all.

And for a further affirmative defense to said alleged cause of action, this defendant alleges and says as follows:

I.

That the defendant Puget Sound Engine Works, Inc., is and at all times herein referred to has been a corporation organized under the laws of the State of Washington with its principal place of business at Seattle in said State.

II.

That the Title Guaranty and Trust Company of Scranton, Penna., is and at all times herein referred to was a corporation organized under the laws of the State of Pennsylvania and authorized to and doing a general surety business in the State of Washington, with its principal place of business at Seattle in said State.

III.

That Crane Company, plaintiff herein, is and at all times herein referred to was a corporation organized and existing under and by virtue of the laws of the State of Illinois, and during all of said times was and still is transacting business in the city of Seattle, State of Washington.

IV.

That heretofore, to wit, on or about the 17th day of February, 1905, the Puget Sound Engine Works, Inc., entered into a contract with the United States of America by and through F. A. Grant, Captain and Quartermaster of the United States Army stationed at Seattle, Washington, wherein and whereby the said Puget Sound Engine Works, Inc., agreed to furnish all of the labor and materials required for and to construct, build and deliver to the United States free from encumbrance, one single screw wooden steamer with engine, boilers, machinery, furniture, etc., which contract is in words and figures as follows, to wit:

"This agreement entered into this seventeenth day of February, nineteen hundred and five, between F. A. Grant, Captain and Quartermaster United States Army, of the first part, and Puget

61 Sound Engine Works, Incorporated, of Seattle, in the county of King, State of —, of the second part, witnesseth, that the said F. A. Grant, Captain and Quartermaster U. S. Army for and in behalf of the United States of America, and the said Puget Sound Engine Works, Incorporated, do covenant and agree, to and with each other, as follows:

Article 1. That the said Puget Sound Engine Works, Incorporated, party of the second part, shall furnish all of the material and

labor required and shall construct, complete and deliver to the United States free from encumbrance, one single screw wooden steamer of the dimensions and with the engines, boilers, machinery, tackle, apparel, furniture, etc., as specified and described in the specifications for said vessel, a copy of which specifications is hereto attached and made a part hereof. Drawings of the vessel and its engines, boilers and machinery, etc., shall be furnished by and at the expense of the party of the second part as set out in paragraph 5 of the said specifications at page 9 under the head 'Drawings.'

Article 2. That full access to vessel while under construction, and full facilities for examination of the labor and material shall be given by the said party of the second part to the inspector or inspectors appointed by the party of the first part to supervise the work

and such tests of material as may be deemed necessary shall be made at the expense of the party of the second part under the supervision of such inspector or inspectors and before receiving the finished coat of paint the vessel shall be tested by trial trip of sufficient duration to satisfy the party of the first part or his representative of the satisfactory operation of the vessel and its machinery, which trial trips shall be made at the expense of the said party of the second part and in the manner set out in paragraph 3, page 9 of said specifications.

Article 3. That for and in consideration of the faithful performance of the stipulations of this agreement the party of the second part shall be paid at the office of the disbursing Quartermaster, U. S. Army, Seattle, Washington, as follows: For the vessel completed according to plans and specifications the total sum of twenty-four thousand eight hundred and eighty-six dollars (\$24,866.00). Payments will be made to the party of the second part as the work progresses upon the vessel in the following manner if so desired: Provided that in the opinion of the officer in charge the work is progressing satisfactorily one-fourth the amount less 20% of the same when labor and material furnished shall equal 25% of the total. A second payment of 15% of the amount less 20% of the same when labor and material furnished shall equal 40% of the total. A third payment of a tenth of the amount less 20% of the same when the labor and material furnished shall equal 50% of the total. A fourth payment of a tenth of the amount less ten per cent (10%) of the same when the labor and material furnished shall equal sixty per cent (60%) of the total, and so on until the total amount, less ten per cent (10%) is paid when the vessel is completed and delivered in accordance with the contract. The sum of this reserved ten per cent (10%) will be paid sixty days after date of delivery and acceptance of the vessel, provided that no defects due to inferior material or bad workmanship have been detected or developed.

Article 4. That the portion of the vessel completed and paid for under said method of partial payments shall become the property of the United States but the party of the second part shall be responsible for the proper care of such portion of the vessel so paid for until final delivery to and acceptance by the United States as more particularly specified at paragraph 15 at page 6 of said specifications.

Article 5. The said vessel shall be satisfactorily completed as stated in article 6 hereon by July 15, 1905, and for each and every day consumed by the party of the second part in excess of that time there shall be paid to the United States as liquidated damages to the said second party the sum of \$50.00 per day, such sum or sums to be deducted from any money due or to become due the said party of the second part.

64 Article 6. That work on this contract shall commence on or before the 18th day of February, 1905, shall be carried forward with reasonable dispatch and be completed on or before the 15th day of July, 1905.

Article 7. That for and in consideration of the faithful performance of the stipulations of this agreement the party of the second part shall be paid at the office of the disbursing Quartermaster U. S. Army at Seattle, Washington, as follows: For the vessel completed as specified the total sum of twenty-four thousand, eight hundred and eighty-six dollars (\$24,886.00) as specified in article 3 hereof.

Article 8. That in case of failure of the said party of the second part to comply with the stipulations of this contract according to the true intent and meaning thereof then the party of the first part shall have the power to complete the work at the expense of the ~~party of the second part~~ in such manner as the party of the first part shall deem best for the interests of the public services, either by day's labor and open market purchase of the necessary material, or by contract, or both, and any excess of cost resulting from such failure shall be charged to the party of the second part.

Article 9. That neither this contract nor any interest therein shall be transferred by the said Puget Sound Engine Works
65 Incorporated to any other party or parties and any such transfer shall cause the annulment of the contract so far as the United States is concerned; all rights of action, however, for any breach of this contract by the said Puget Sound Engine Works, Incorporated, are reserved to the United States.

Article 10. That no member of or delegate to Congress, nor any person belonging to or employed in the military service of the United States, is or shall be admitted to any share or part of this contract, or to any benefit which may arise herefrom, but this stipulation so far as it relates to members of or delegates to Congress is not to be construed to extend to this contract.

Article 11. That this contract shall be subject to the approval of the Quartermaster General U. S. Army.

In witness whereof, the undersigned have hereunto placed their hands the date first hereinbefore written.

Witnesses:

FRANK W. GOODHUE, As to
F. A. GRANT,

Captain and Quartermaster U. S. Army.

CHAS. M. DIAL, As to

PUGET SOUND ENGINE WORKS, INC.

M. L. JONES, As to

By W. O. SULLIVAN, JR., *Pres.*

SEATTLE, WASH., *March 2d, 1905.*

I hereby certify that I have fully satisfied myself that the party signing the above and foregoing contract for and in behalf of the Puget Sound Engine Works, Inc., contracting party, to wit, W. O. Sullivan, Jr., its president, has the authority to bind the said corporation, and I hereby waive, therefore, the requirement of evidence from him as to the sufficiency of his authority to so sign and by signing bind said corporation.

F. A. GRANT,

Captain and Quartermaster U. S. Army."

—and that thereafter, to wit, on the 27th day of February, 1906, after the execution and delivery of the said contract, this defendant executed an obligation in words and figures as follows, to wit:

Contractor's Bond.

(Public Works.)

Know all men by these presents that we, Puget Sound Engine Works, Incorporated, a corporation existing under the laws of the State of Washington, as principal, and The Title Guaranty and Trust Company of Scranton, Penna., a corporation existing under the laws of the State of Pennsylvania, as surety, are held and bound unto the United States of America, in the penal sum of ten thousand (10,000) dollars, to the payment of which sum well
67 and truly to be made, we bind ourselves and our successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the above-bounden Puget Sound Engine Works, Incorporated, has on the seventeenth day of February, 1905, entered into a contract with the United States, represented by F. A. Grant, Captain and Quartermaster U. S. Army, stationed at Seattle, Washington, for constructing complete and delivering to the United States free from all encumbrance, one steam propeller vessel in accordance with plans and specifications;

Now, therefore, if the above-bounden Puget Sound Engine Works Incorporated, shall and will, in all respects, duly and fully observe and perform all and singular the covenants, conditions and agreements in and by the said contract agreed and covenanted by said Puget Sound Engine Works, Incorporated, to be observed and performed according to the true intent and meaning of the said contract, and as well during any period of extensions of said contract that may be granted on the part of the United States as during the original term of the same, and shall promptly make full payments to all persons supplying it labor or materials in the prosecution of the work provided for in said contract, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

68 In witness whereof, the parties hereto have executed this instrument this 27th day of February, 1905, the name and corporate seal of said principal being hereto affixed and these presents duly signed by its president pursuant to a resolution of its Board of Directors, passed on the 16th day of September, 1904, a copy of the record of which is hereto attached; and the name and corporate seal of said surety being hereto affixed and these presents duly signed by its attorney in fact pursuant to resolution of its Board of Directors passed on the 2d day of April, 1904, a copy of the record of which is on file in the War Department.

PUGET SOUND ENGINE WORKS, [SEAL.]

By W. O. SULLIVAN, [SEAL.]
W. O. SULLIVAN, JR., *President.*

THE TITLE GUARANTY AND TRUST COM-
PANY OF SCRANTON, PENNA., [SEAL.]

By H. A. RASER,
Its Att'y in Fact.

Attest:

CHAS. M. DIAL,
M. F. JONES,
As to Principal.

Attest:

CHAS. M. DIAL, [SEAL.]
As to Surety.

69

V.

That the foregoing bond is the only bond executed by this defendant in said connection and is the obligation referred to in the complaint and in the complaints in intervention, and that the same was executed by this defendant and accepted by the United States for its sole benefit and protection, and for the protection of no other person or concern or corporation, and that the same was delivered by this defendant to no person nor for the benefit of any person except the United States, and that the execution of the said bond contract was without consideration as to any party or concern furnishing labor or material to the said Puget Sound Engine Works, Inc., to be used or which was used in the construction of the said vessel, and that the same was wholly without consideration and without authority of law as to the said complainant and intervenors, and each of them, and also without consideration as to the United States of America, and that the said complainant, and each of the said intervenors are seeking and asserting their claim upon the said obligation wholly and solely through benefits which they claim under an act of August 13, 1894, entitled "An Act for the Protection of Persons Furnishing Material and Labor for the Construction of Public Works," found in Volume 28 of the general statutes of the

United States at page 287, and the amendment of said act of February 24, 1905, found in Volume 33 of the United States general statutes at page 811, and the said complainant,

and each of the said intervenors are asserting their claims under and by virtue of not other provision; that the provisions of said act and amendment refer to the construction of structures built entirely upon

soil belonging to the United States and has no application to the construction of vessels or the making or completing of chattels.

And for a further affirmative defense to said alleged cause of action this defendant alleges and says as follows:

I.

By reference it asks that paragraphs I, II, III and IV of its first affirmative defense be made a part of this defense as fully as if set forth at length herein and adopts said paragraphs as a part of this defense.

II.

That the intervenor herein at no time before intervening in the above entitled action applied for, in the manner required by law, or at all, a copy of the said obligation and had at the time of the commencement of the said action no copy of said bond, and commenced the said action upon the said bond without having first procured a copy thereof, or without having in its possession or
71 issued for its use, any copy of said bond, and instituted said action without any warrant or authority of law whatsoever.

And for a further affirmative defense to said alleged cause of action, this defendant alleges and says as follows:

I.

By reference it asks that paragraphs I, II, III and IV of its first affirmative defense be made a part of this defense as fully as if set forth at length herein, and adopts said paragraphs as a part of this defense.

II.

That the construction of the vessel referred to in said contract and bond has been fully completed and the said steamer accepted by the United States, and that said steamer is now in the service of the United States.

III.

That at the time of the completion of the said vessel the United States had in its hands a large amount of money, the exact amount of which is unknown to this defendant, applicable to the payment of the claims against the said vessel and that the said complainant, together with the intervenors in this action, are the only creditors of the said Puget Sound Engine Works, Incorporated, have claims for labor or material furnished in the construction of the said vessel, and that all the other creditors of the said Puget Sound Engine Works, Incorporated, if any, are general creditors, hav-
72 ing extended credit to it on account of matters foreign to and unconnected with the construction of the said steamer and that the parties to this action are the only persons entitled to participate in the proceeds of said contract and that if this defendant is liable upon said bond then it is entitled to have the amount due from the United States of America on account of said contract deducted from the amount of its obligation and the said intervenor has failed, refused and neglected, and still refuses to make the United States of America

a party defendant to this action that the true amount may be ascertained, if anything there is due upon said bond obligation.

And for a further affirmative defense to said alleged cause of action, this defendant alleges and says as follows:

I.

By reference it asks that paragraphs I, II, III and IV of its first affirmative defense be made a part of this defense as fully as if set out at length herein, and adopts said paragraphs as part of this defense.

II.

That the statute laws of the State of Washington, the State in which said vessel was constructed, Vol. 2 Ballinger's Annotated Codes and Statutes of the State of Washington, Section 5952, as
73 amended by an act of the state legislature, approved on the 28th day of February, 1901, entitled "An Act Relating to Liens upon Steamers, Vessels and Boats, their Tackle, Apparel and Furniture, and Amending Section 5953 of Ballinger's Annotated Codes and Statutes of the State of Washington," provides that any person who furnishes material in the construction of a vessel in the State of Washington has a lien thereon for the contract price of the reasonable value of such labor and material and that whatever labor or material, if any, was furnished to the said Puget Sound Engine Works, Inc., by the said intervenor for use in building said vessel, was furnished and became a part of the said vessel when the same belonged to the Puget Sound Engine Works, Inc., and before the same became the property of the United States, and while the said vessel was subject to a lien for the labor or material furnished to said Puget Sound Engine Works, Incorporated, by plaintiff herein.

III.

That the said complainant stood by and failed and neglected to enforce his lien against the said vessel and suffered the said security for the payment of his claim to be lost, and said security was ample to pay the full claim of the said complainant and all other parties to this action, and that by reason of the negligence and delay and
74 acts of said complainant there has been lost to this defendant all said security to which it would be lawfully entitled upon the payment to the said complainant and intervenors under said obligation and that by reason of said action on the part of the said complainant this defendant has lost its right to be subrogated upon the payment of the said complainant's claim if it be entitled to one, the lien which said complainant had and could have enforced, but by reason of its negligence failed to do.

Wherefore this defendant having fully answered prays that it may go hence without day, and for its costs herein laid out and expended.

GRAVES, PALMER & MURPHY,
*Attorneys for Defendant Title Guaranty and
Trust Company of Scranton, Penna.*

UNITED STATES OF AMERICA,
Western District of Wash., ss:

Clarence S. Parker, being first duly sworn, on oath deposes and says: That he is the General Agent for the State of Washington, of the Title Guaranty and Trust Company of Scranton, Penna., a foreign corporation, and authorized by it to make this verification; that he has heard the foregoing answer read, knows the contents thereof and believes the same to be true.

CLARENCE S. PARKER.

75 Subscribed and sworn to before me this 13 day of October, 1906.

C. H. WINDERS, [SEAL.]
*Notary Public in and for the State
 of Washington, Residing at Seattle, Wn.*

[Endorsed:] Answer of Defendant Title Guaranty and Trust Company to Complaint of Plaintiff. Filed in the U. S. Circuit Court, Western Dist. of Washington, Oct. 20, 1906. A Reeves Ayres, Clerk. By R. M. Hopkins, Dep.

In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and Title Guaranty and Trust Company of Scranton, Penna. (a Corporation), Defendants.

OLYMPIC FOUNDRY COMPANY (a Corporation) et al., Intervenors.

76 *Answer of Title Guaranty and Trust Company of Scranton, Penna., to Complaint in Intervention of Olympic Foundry Company.*

Comes now the Title Guaranty and Trust Company of Scranton, Penna., one of the defendants above named, and insisted upon the merits of its demurrer filed herein and not waiving any of the rights reserved to its use by the record in excepting to the Court's ruling upon said demurrer, the said defendant for answer to the complaint in intervention of Olympic Foundry Company, a corporation, denies and says as follows:

I.

Referring to paragraph V this defendant admits that it executed as surety to the United States of America a certain construction bond

wherein and whereby it agreed that its codefendant the Puget Sound Engine Works, Inc., should fully observe and perform all and singular the covenants, conditions and agreements contained in that certain contract for the construction of one steam propeller vessel known as the steamer "Lieutenant George M. Harris," and that said bond was further conditioned for the full payment by the said Puget Sound Engine Works to all persons supplying labor or materials in the prosecution of the work provided for in said
77 contract, and further admits that said bond was duly executed and delivered on the 27th day of February, 1905, but denies each and every other allegation therein contained and the whole thereof.

II.

Referring to paragraph VI this defendant has no knowledge or information as to the matters and things therein set forth sufficient upon which to base a belief, and consequently denies the same and each and every allegation therein contained, and the whole thereof.

III.

Referring to paragraph VII this defendant has no knowledge or information as to the matters and things therein set forth sufficient upon which to base a belief, and consequently denies the same and each and every allegation therein contained, and the whole thereof; denies that goods, wares and merchandise were furnished by intervenor as therein alleged, of the value of \$852.91, or of any other value, or in any other manner, or at all, and denies that there is still due and owing to said intervenor the sum of \$771.04 as therein alleged, or any other sum or sums, or upon any other account, or at all.

And for a further affirmative defense to said alleged cause of action, this defendant alleges and says as follows:

I.

78 That the defendant Puget Sound Engine Works, Inc., is and at all times herein referred to has been a corporation organized under the laws of the State of Washington with its principal place of business at Seattle, in said State.

II.

That the Title Guaranty and Trust Company of Scranton, Penna., is and at all times herein referred to was a corporation organized under the laws of the State of Pennsylvania and authorized to and doing a general surety business in the State of Washington, with its principal place of business at Seattle in that State.

III.

That Crane Company, plaintiff herein, is and at all times herein referred to was, a corporation organized and existing under and by virtue of the laws of the State of Illinois, and during all of said times was and still is transacting business in the city of Seattle, State of Washington.

IV.

That heretofore, to wit, on or about the 17th day of February, 1905, the Puget Sound Engine Works, Inc., entered into a contract with the United States of America by and through F. A. Grant, Captain and Quartermaster of the United States Army stationed at Seattle, Washington, wherein and whereby the said Puget Sound Engine Works, Inc., agreed to furnish all of the labor and

79 material required for and to construct, build and deliver to the United States free from encumbrances, one single screw wooden steamer with engine, boilers, machinery, furniture, etc., which contract is in words and figures as follows, to wit:

This agreement entered into this seventeenth day of February, nineteen hundred and five, between F. A. Grant, Captain and Quartermaster, United States Army, of the first part, and Puget Sound Engine Works, Incorporated, of Seattle, in the county of Kings, State of —, of the second part, witnesseth, that the said F. A. Grant, Captain and Quartermaster, U. S. Army, for — in behalf of the United States of America, and the said Puget Sound Engine Works, Incorporated, do covenant and agree, to and with each other, as follows:

Article 1. That the said Puget Sound Engine Works, Incorporated, party of the second part, shall furnish all of the material and labor required and shall construct, complete and deliver to the United States free from encumbrance, one single screw wooden steamer of the dimensions and with the engines, boilers, machinery, tackle, apparel, furniture, etc., as specified and described in the specifications for said vessel, a copy of which specifications is hereto attached and made a part hereof. Drawings of the vessel and its

80 engines, boilers and machinery, etc., shall be furnished by and at the expense of the party of the second part as set out in paragraph 5 of the said specifications at page 9 under the head "Drawings."

Article 2. That full access to vessel while under construction, and full facilities for examination of the labor and material shall be given by the said party of the second part to the inspector or inspectors appointed by the party of the first part to supervise the work and such tests of material as may be deemed necessary shall be made at the expense of the party of the second part under the supervision of such inspector or inspectors and before receiving the finished coat of paint the vessel shall be tested by trial trip of sufficient duration to satisfy the party of the first part or his representative of the satisfactory operation of the vessel and its machinery, which trial trips shall be made at the expense of the said party of the second part and in the manner set out in paragraph 3, page 9 of said specifications.

Article 3. That for and in consideration of the faithful performance of the stipulations of this agreement the party of the second part shall be paid at the office of the disbursing Quartermaster, U. S. Army, Seattle, Washington, as follows:

For the vessel completed according to plans and specifications the total sum of twenty-four thousand eight hundred and eighty-six

dollars (\$24,886.00). Payment will be made to the party
81 of the second part as the work progresses upon the vessel in
the following manner if so desired: Provided that in the
opinion of the officer in charge the work is progressing satisfactorily
one-fourth the amount less 20% of the same when labor and material
furnished shall equal 25% of the total. A second payment of
15% of the amount less 20% of the same when labor and material
furnished shall equal 40% of the total. A third payment of a tenth
of the amount less 20% of the same when the labor and material
furnished shall equal 50% of the total. A fourth payment of a tenth
of the amount less ten per cent (10%) of the same when the labor
and material furnished shall equal sixty per cent (60%) of the total,
and so on until the total amount, less ten per cent (10%) is paid
when the vessel is completed and delivered in accordance with the
contract. The sum of this reserved ten per cent (10%) will be paid
sixty days after date of delivery and acceptance of the vessel, provided
that no defects due to inferior material of bad workmanship
have been detected or developed.

Article 4. That the portion of the vessel completed and paid for
under said method of partial payments shall become the property
of the United States but the party of the second part shall be responsible
for the proper care of such portion of the vessel so paid
82 as more particularly specified at paragraph 15 at page 6 of
said specifications.

Article 5. The said vessel shall be satisfactorily completed as
stated in article 6 herein by July 15, 1905, and for each and every
day consumed by the party of the second part in excess of that time
there shall be paid to the United States as liquidated damages to
the said second party the sum of \$50.00 per day, such sum or sums
to be deducted from any money due or to become due the said party
of the second part.

Article 6. That work on this contract shall commence on or before
the 18th day of February, 1905, shall be carried forward with
reasonable dispatch and be completed on or before the 15th day of
July, 1905.

Article 7. That for and in consideration of the faithful performance
of the stipulations of this agreement the party of the second
part shall be paid at the office of the disbursing Quartermaster U. S.
Army, at Seattle, Washington, as follows: For the vessel completed
as specified the total sum of twenty-four thousand, eight hundred
and eighty-six dollars (\$24,886.00) as specified in article 3 hereof.

Article 8. That in case of failure of the said party of the second
part to comply with the stipulations of this contract according to
the true intent and meaning thereof then the party of the
83 first part shall have the power to complete the work at the
expense of the party of the second part in such manner as
the party of the first part shall deem best for the interests of the
public service, either by day's labor and open market purchases of
the necessary material, or by contract, or both, and any excess of
cost resulting from such failure shall be charged to the party of the
second part.

Article 9. That neither the contract nor any interest therein shall be transferred by the Puget Sound Engine Works, Incorporated, to any other party or parties and any such transfer shall cause the annulment of the contract so far as the United States is concerned; all rights of action, however, for any breach of this contract by the Puget Sound Engine Works, Incorporated, are reserved to the United States.

Article 10. That no member of or delegate to Congress, nor any person belonging to or employed in the military service of the United States, is or shall be admitted to any share or part of this contract, or to any benefit which may arise herefrom, but this stipulation so far as it related to members of or delegates to Congress is not to be construed to extend to this contract.

Article 11. That this contract shall be subject to the approval of the Quartermaster General of the U. S. Army.

84 In witness whereof, the undersigned hereunto placed their hands the date first hereinbefore written.

Witnesses:

FRANK W. GOODHUE, As to

F. A. GRANT,

Captain and Quartermaster U. S. Army.

CHAS. M. DIAL, As to

PUGET SOUND ENGINE WORKS, INC.

M. L. JONES, As to

By W. O. SULLIVAN, JR., *Pres.*

Office of the Quartermaster U. S. Army.

SEATTLE, WASHINGTON, *March 2, 1905.*

I hereby certify that I have fully satisfied myself that the party signing the above and foregoing contract for and in behalf of the Puget Sound Engine Works, Inc., contracting party, to wit, W. O. Sullivan, Jr., its president, has the authority to bind the said corporation, and I hereby waive therefore, the requirement of evidence from him as to the sufficiency of his authority to so sign and by signing bind said corporation.

F. A. GRANT,

Captain and Quartermaster, U. S. Army.

—and that thereafter, to wit, on the 27th day of February, 1906, after the execution and delivery of the said contract, this
85 defendant executed an obligation in words and figures as follows, to wit:

Contractor's Bond.

(Public Works.)

Know all men by these presents that we, Puget Sound Engine Works, Incorporated, a corporation, existing under the laws of the State of Washington, as principal, and the Title Guaranty and Trust Company of Scranton, Penna., a corporation, existing under the laws

of the State of Pennsylvania, as surety, are held and bound unto the United States of America, in the penal sum of ten thousand (\$10,000) dollars, to the payment of which sum well and truly to be made, we bind ourselves and our successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas the above-bounden Puget Sound Engine Works, Incorporated, has on the seventeenth day of February, 1905, entered into a contract with the United States, represented by F. A. Grant, Captain and Quartermaster, U. S. Army, stationed at Seattle, Washington, for constructing complete and delivering to the United States free from all encumbrance, one steam propeller vessel in accordance with plans and specifications.

Now therefore if the above-bounden Puget Sound Engine Works, Incorporated, shall and will, in all respects, duly and fully
86 observe and perform all and singular the covenants, conditions and agreements in and by the said contract agreed and covenanted by said Puget Sound Engine Works, Incorporated, to be observed and performed according to the true intent and meaning of the said contract, and as well during any period of extension of said contract that may be granted on the part of the United States as during the original term of the same, and shall promptly make full payments to all persons supplying it labor or materials in the prosecution of the work provided for in said contract, then the above obligation shall be void and of no effect; otherwise to remain in full force and virtue.

In witness whereof, the parties hereto have executed this instrument this 27th day of February, 1905, the name and corporate seal of said principal being hereto affixed and these presents duly signed by its president pursuant to a resolution of its Board of Directors, passed on the 16th day of September, 1904, a copy of the record of which is hereto attached; and the name and corporate seal of said surety being hereto affixed and these presents duly signed by its attorney in fact pursuant to resolution of its Board of Directors
87 passed on the 2d day of April, 1904, a copy of the record of which is on file in the War Department.

PUGET SOUND ENGINE WORKS. [SEAL.]

By W. O. SULLIVAN. [SEAL.]

W. O. SULLIVAN, JR., *President*.

THE TITLE GUARANTY AND TRUST CO.

OF SCRANTON, PENNA., [SEAL.]

By H. A. RASER,

Its Attorney in Fact.

Attest:

CHAS. M. DIAL,

M. F. JONES,

As to Principal.

Attest:

CHAS. M. DIAL. [SEAL.]

As to Surety.

V.

That the foregoing bond is the only bond executed by this defendant in said connection and is the obligation referred to in the complaint and in the complaints in intervention, and that the same was executed by this defendant and accepted by the United States for its sole benefit and protection, and for the protection of no other person or concern or corporation, and that the same was delivered by this defendant to no person nor for the benefit of any person except the United States, and that the execution of the said bond contract was without consideration as to any party or concern furnishing labor or material to the said Puget Sound Engine Works, Inc., to be used or which was used in the construction of the said vessel, and that the same was wholly without consideration and without authority of law as to the said complainant and intervenors, and each of them, and also without consideration as to the United States of America, and that the said complainant and each of the said intervenors are seeking and asserting their claim upon the said obligation wholly and solely through benefits which they claim under an act of August 13, 1894, entitled "An Act for the Protection of Persons Furnishing Material and Labor for the Construction of Public Works," found in Volume 28 of the general statutes of the United States at page 287 and the amendment of said act of February 24, 1905, found in Volume 33 of the United States general statutes at page 811, and the said complainant, and each of the said intervenors are asserting their claims under and by virtue of no other provisions; that the provisions of said act and amendment refer to the construction of structures built entirely upon soil belonging to the United States and has no application to the construction of vessels or the making or completing of chattels.

88
89 And for a further affirmative defense to said alleged cause of action this defendant alleges and says as follows:

I.

By reference it asks that paragraphs I, II, III and IV, of its first affirmative defense be made a part of this defense as fully as if set forth at length herein and adopts said paragraphs as a part of this defense.

II.

That the intervenor herein at no time before intervening in the above-entitled action applied for, in the manner required by law, or at all, a copy of the said obligation and had at the time of the commencement of the said action no copy of said bond, and commenced the said action upon the said bond without having first procured a copy thereof or without having in its possession or issued for its use any copy of said bond, and instituted said action without any warrant or authority of law whatsoever.

And for a further affirmative defense to said alleged cause of action, this defendant alleges and says as follows:

I.

By reference it asks that paragraphs I, II, III and IV of its first affirmative defense be made a part of this defense as fully as
90 if set forth at length herein and adopts said paragraphs as a part of this defense.

II.

That the construction of the vessel referred to in said contract and bond has been fully completed and the said steamer accepted by the United States, and that said steamer is now in the service of the United States.

III.

That at the time of the completion of the said vessel the United States had in its hands a large amount of money, the exact amount of which is unknown to this defendant, applicable to the payment of the claims against the said vessel and that the said intervenor, together with the complainant and the other intervenors in this action, are the only creditors of the said Puget Sound Engine Works, Inc., that have claims for labor or material furnished in the construction of the said vessel, and that all the other creditors of the said Puget Sound Engine Works, Inc., if any, are general creditors, having extended credit to it on account of matter foreign to and unconnected with the construction of the said steamer and that the parties to this action are the only persons entitled to participate in the proceeds of said contract and that if this defendant is liable upon said bond then it is entitled to have the amount due from the

91 United States of America on account of said contract deducted from the amount of its obligation and the said intervenor has failed, refused and neglected, and still refuses to make the United States of America a party defendant to this action that the true amount may be ascertained, if anything there is due upon said bond obligation.

And for a further affirmative defense to said alleged cause of action, this defendant alleges and says as follows:

I.

By reference it asks that paragraphs I, II, III and IV of its first affirmative defense be made a part of this defense as fully as if set out at length herein, and adopts said paragraphs as a part of this defense.

II.

That the statute laws of the State of Washington, the State in which said vessel was constructed, Vol. 2 Ballinger's Annotated Codes and Statutes of the State of Washington, Section 5952, as amended by an act of the State Legislature, approved on the 28th day of February, 1901, entitled "An Act Relating to Liens upon Steamers, Vessels and Boats, their Tackle, Apparel and Furniture, and Amending Section 5953 of Ballinger's Annotated Codes and

Statutes of the State of Washington," provides that any person who furnished material in the construction of a vessel in the
 92 State of Washington has a lien thereon for the contract price of the reasonable value of such labor and material and that whatever labor or material if any, was furnished to the said Puget Sound Engine Works, Inc., by the said intervenor for use in building said vessel, was furnished and became a part of the said vessel when the same belonged to the Puget Sound Engine Works, Inc., and before the same became the property of the United States, and while the said vessel was subject to a lien for the labor or material furnished to said Puget Sound Engine Works, Incorporated, by intervenor herein.

III.

That the said intervenor stood by and failed and neglected to enforce his lien against the said vessel and suffered the said security for the payment of his claim to be lost, and said security was ample to pay the full claim of the said complainant and all other parties to this action, and that by reason of the negligence and delay and acts of the said intervenor there has been lost to this defendant all said security to which it would be lawfully entitled upon the payment to the said intervenor and the complainant and other intervenors under said obligation and that by reason of said action on the part of the said intervenor this defendant has lost its right to be subrogated upon the payment of the said intervenor claim if it be entitled
 93 to one, the lien which said intervenor had, and could have enforced, but by reason of its negligence failed to do.

Wherefore this defendant having fully answered prays that it may go hence without day, and for its costs herein laid out and expended.

GRAVES, PALMER & MURPHY,
*Attorneys for Defendant Title Guaranty and
 Trust Company of Scranton, Penna.*

UNITED STATES OF AMERICA,
Western District of Wash., ss:

Clarence S. Parker, being first duly sworn, on oath deposes and says: That he is the general agent for the State of Washington, of the Title Guaranty and Trust Company, of Scranton, Penna., a foreign corporation, and authorized by it to make this verification; that he has heard the foregoing answer read, knows the contents thereof and believes the same to be true.

CLARENCE S. PARKER.

Subscribed and sworn to before me this 13th day of October, 1906.
 [SEAL.] C. H. WINDERS.

*Notary Public in and for the State of Wash-
 ington, Residing at Seattle, Wash.*

Due service of the within answer acknowledged and a true copy received this 16th day of October, 1906.

GRAY & STERN.

94 [Endorsed:] Answer of Title Guaranty and Trust Company to Complaint of Olympic Foundry Co. Filed in the U. S. Circuit Court, Western Dist. of Washington. Oct. 20, 1906. A. Reeves Ayres, Clerk. R. M. Hopkins, Dep.

In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,
vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and The Title Guaranty and Trust Company of Scranton, Penna. (a Corporation), Defendants.

OLYMPIC FOUNDRY COMPANY (a Corporation) et al., Intervenor.

95 *Answer of Title Guaranty and Trust Company of Scranton, Penna., to Complaint in Intervention of Eyres Transfer Company.*

Comes now the Title Guaranty and Trust Company of Scranton, Penna., one of the defendants above named, and insisting upon the merits of its demurrer filed herein and not waiving any of the rights reserved to its use by the record in excepting to the court's ruling upon said demurrer, the said defendant for answer to the complaint in intervention of Eyres Transfer Company, a corporation, denies and says as follows:

I.

Referring to paragraph V this defendant admits that it executed as surety to the United States of America a certain construction bond wherein and whereby it agreed that its codefendant, the Puget Sound Engine Works, Inc., should fully observe and perform all and singular the covenants, conditions, and agreements contained in that certain contract for the construction of one steam propeller vessel known as the steamer "Lieutenant George M. Harris," and that said bond was further conditioned for the full payment by the said Puget Sound Engine Works, Inc., to all persons supplying labor or materials in the prosecution of the work provided for in said
96 contract, and further admits that said bond was duly executed and delivered on the 27th day of February, 1905, but denies each and every other allegation therein contained, and the whole thereof.

II.

Referring to paragraph VI this defendant denies that it has any knowledge or information as to the matters and things therein set forth sufficient upon which to base a belief; denies that said inter-

venor rendered services and furnished material of the value of \$98.82 as therein alleged, or of any other value, or in any other manner, or at all.

And for a further affirmative defense to said alleged cause of action, this defendant alleges and says as follows:

I.

That the defendant, Puget Sound Engine Works, Inc., is and at all times herein referred to has been a corporation organized under the laws of the State of Washington with its principal place of business at Seattle, in said state.

II.

That the Title Guaranty and Trust Company of Scranton, Penna., is and at all times herein referred to was a corporation organized under the laws of the State of Pennsylvania and authorized to and doing a general surety business in the State of Washington, with its principal place of business at Seattle in said State.

97

III.

That Crane Company, plaintiff herein, is and at all times herein referred to was a corporation organized and existing under and by virtue of the laws of the State of Illinois, and during all of said times was and still is transacting business in the city of Seattle, State of Washington.

IV.

That heretofore, to wit, on or about the 17th day of February, 1905, the Puget Sound Engine Works, Inc., entered into a contract with the United States of America by and through F. A. Grant, Captain and Quartermaster of the United States Army stationed at Seattle, Washington, wherein and whereby the said Puget Sound Engine Works, Inc., agreed to furnish all of the labor and material required for and to construct, build and deliver to the United States free from encumbrances, one single screw wooden steamer with engine, boilers, machinery, furniture, etc., which contract is in words and figures as follows, to wit:

This agreement entered into this seventeenth day of February, nineteen hundred and five, between F. A. Grant, Captain and Quartermaster, United States Army, of the first part, and Puget Sound Engine Works, Incorporated, of Seattle, in the county of

King, State of —, of the second part, witnesseth, that the
98 said F. A. Grant, Captain and Quartermaster, U. S. Army, for
 in behalf of the United States of America, and the said Puget
Sound Engine Works, Incorporated, do covenant and agree, to and
with each other, as follows:

Article 1. That the said Puget Sound Engine Works, Incorporated, party of the second part, shall furnish all of the material and labor required and shall construct, complete and deliver to the United States free from encumbrances, one single screw wooden

steamer of the dimensions and with the engines, boilers, machinery, tackle, apparel, furniture, etc., as specified and described in the specifications for said vessel, a copy of which specifications is hereto attached and made a part thereof. Drawings of the vessel and its engines, boilers and machinery, etc., shall be furnished by and at the expense of the party of the second part as set out in paragraph 5 of the said specifications at page 9 under the head "Drawings."

Article 2. That full access to vessel while under construction, and full facilities for examination of the labor and material shall be given by the said party of the second part to the inspector or inspectors appointed by the party of the first part to supervise the work and such tests of material as may be deemed necessary shall be made at the expense of the party of the second part under the supervision of

99 such inspector or inspectors and before receiving the finished coat of paint the vessel shall be tested by trial trip of sufficient duration to satisfy the party of the first part or his representative of the satisfactory operation of the vessel and its machinery, which trial trips shall be made at the expense of the said party of the second part and in the manner set out in paragraph 3, page 9 of said specifications.

Article 3. That for and in consideration of the faithful performance of the stipulations of this agreement the party of the second part shall be paid at the office of the disbursing Quartermaster, U. S. Army, Seattle, Washington, as follows:

For the vessel completed according to plans and specifications the total sum of twenty-four thousand eight hundred and eighty-six dollars (\$24,886.00). Payment will be made to the party of the second part as the work progresses upon the vessel in the following manner if so desired: Provided that in the opinion of the officer in charge the work is progressing satisfactorily, one-fourth the amount less 20% of the same when labor and material furnished shall equal 25% of the total. A second payment of 15% of the amount less 20% of the same when labor and material furnished shall equal 40% of the total. A third payment of a tenth of the amount less 20% of the same when the labor and material furnished shall equal 50% of the total. A fourth payment of a tenth of the amount less ten per cent (10%) of the same when the labor and material
100 furnished shall equal sixty per cent (60%) of the total, and so on until the total amount, less ten per cent (10%) is paid when the vessel is completed and delivered in accordance with the contract. The sum of this reserved ten per cent (10%) will be paid sixty days after date of delivery and acceptance of the vessel, provided that no defects due to inferior material of bad workmanship have been detected or developed.

Article 4. That the portion of the vessel completed and paid for under said method of partial payments shall become the property of the United States but the party of the second part shall be responsible for the proper care of such portion of the vessel so paid for until final delivery to and acceptance by the United States as more particularly specified at paragraph 15 at page 6 of said specifications.

Article 5. The said vessel shall be satisfactorily completed as stated

in article 6 herein by July 15, 1905, and for each and every day consumed by the party of the second part in excess of that time there shall be paid to the United States as liquidated damages to the said second party the sum of \$50.00 per day, such sum or sums to be deducted from any money due or to become due the said party of the second part.

Article 6. That work on this contract shall commence on or before the 18th day of February, 1905, shall be carried forward
101 with reasonable dispatch and be completed on or before the 15th day of July, 1905.

Article 7. That for and in consideration of the faithful performance of the stipulations of this agreement the party of the second part shall be paid at the office of the disbursing Quartermaster U. S. Army, at Seattle, Washington, as follows: For the vessel completed as specified the total sum of twenty-four thousand, eight hundred and eighty-six dollars (\$24,886.00) as specified in article 3 hereof.

Article 8. That in case of failure of the said party of the second part to comply with the stipulations of this contract according to the true intent and meaning thereof then the party of the first part shall have the power to complete the work at the expense of the party of the second part in such manner as the party of the first part shall deem best for the interests of the public service, either by days labor and open market purchases of the necessary material, or by contract, or both, and any excess of cost resulting from such failure shall be charged to the party of the second part.

Article 9. That neither the contract nor any interest therein shall be transferred by the Puget Sound Engine Works, Incorporated, to any other party or parties and any such transfer shall cause the annulment of the contract so far as the United States is con-
102 cerned; all rights of action, however, for any breach of this contract by the Puget Sound Engine Works, Incorporated, are reserved to the United States.

Article 10. That no member of or delegate to Congress, nor any person belonging to or employed in the military service of the United States, is or shall be admitted to any share or part of this contract, or to any benefit which may arise herefrom, but this stipulation so far as it related to members or delegates to Congress is not to be construed to extend to this contract.

Article 11. That this contract shall be subject to the approval of the Quartermaster General, of the U. S. Army.

In witness whereof, the undersigned hereunto placed their hands the date first hereinbefore written.

Witnesses:

FRANK W. GOODHUE, As to

F. A. GRANT,

Captain and Quartermaster U. S. Army.

CHAS. M. DIAL, As to

PUGET SOUND ENGINE WORKS, INC.

M. L. JONES, As to

By W. O. SULLIVAN, JR., *Pres.*

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Office of the Quartermaster, U. S. Army.

SEATTLE, WASHINGTON, *March 2, 1905.*

I hereby certify that I have fully satisfied myself that the party signing the above and foregoing contract for and in behalf of the Puget Sound Engine Works, Inc., contracting party, to wit, W. O. Sullivan, Jr., its president, has authority to bind the said corporation, and I hereby waive therefore, the requirement of evidence from him as to the sufficiency of his authority to so sign and by signing bind said corporation.

F. A. GRANT,

Captain and Quartermaster, U. S. Army.

—and that thereafter, to wit, on the 27th day of February, 1906, after the execution and delivery of the said contract, this defendant executed an obligation in words and figures as follows, to wit:

Contractor's Bond.

(Public Works.)

Know all men by these presents that we, Puget Sound Engine Works, Incorporated, a corporation, existing under the laws of the State of Washington, as principal, and the Title Guaranty and Trust Company of Scranton, Penna., a corporation, existing under the laws of the State of Pennsylvania, as surety are held and bound unto the United States of America, in the penal sum of ten thousand (\$10,000) dollars, to the payment of which sum well and
104 truly to be made, we bind ourselves and our successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas the above bounden Puget Sound Engine Works, Incorporated, has on the seventeenth day of February, 1905, entered into a contract with the United States, represented by F. A. Grant, Captain and Quartermaster, U. S. Army, stationed at Seattle, Washington, for constructing complete and delivering to the United States free from all encumbrance, one steam propeller vessel in accordance with plans and specifications.

Now, therefore, if the above-bounden Puget Sound Engine Works, Incorporated, shall and will, in all respects, duly and fully observe and perform all and singular the covenants, conditions and agreements in and by the said contract agreed and covenanted by said Puget Sound Engine Works, Incorporated, to be observed and performed according to the true intent and meaning of the said contract, and as well during any period of extension of said contract that may be granted on the part of the United States as during the original term of the same, and shall promptly make full payments to all persons supplying it labor or materials in the prosecution of the work provided for in said contract, then the above obligation shall be void and of no effect; otherwise to remain in full force and virtue.

105 In witness whereof, the parties hereto have executed this instrument this 27th day of February, 1905, the name and corporate seal of said principal being hereto affixed and these presents duly signed by its president pursuant to a resolution of its Board of Directors, passed on the 16th day of September, 1904, a copy of the record of which is hereto attached; and the name and corporate seal of said surety being hereto affixed and these presents duly signed by its attorney in fact pursuant to resolution of its Board of Directors passed on the 2d day of April, 1904, a copy of the record of which is on file in the War Department.

PUGET SOUND ENGINE WORKS, [SEAL.]
 By W. O. SULLIVAN, [SEAL.]
 W. O. SULLIVAN, JR., *President.*
 THE TITLE GUARANTY AND TRUST COM-
 PANY OF SCRANTON, PENNA., [SEAL.]
 By H. A. RASER,
Its Attorney in Fact.

Attest:

CHAS. M. DIAL,
 M. F. JONES,
As to Principal,

Attest:

CHAS. M. DIAL, [SEAL.]
As to Surety.

106

V.

That the foregoing bond is the only bond executed by this defendant in said connection and is the obligation referred to in the complaint and in the complaints in intervention, and that the same was executed by this defendant and accepted by the United States for its sole benefit and protection, and for the protection of no other person or concern or corporation, and that the same was delivered by this defendant to no person nor for the benefit of any person except the United States, and that the execution of the said bond contract was without consideration as to any party or concern furnishing labor material to the said Puget Sound Engine Works, Inc., to be used or which was used in the construction of the said vessel, and that the same was wholly without consideration and without authority of law as to the said complainant and intervenors, and each of them, and also without consideration as to the United States of America, and that the said complainant, and each of the said intervenors are seeking and asserting their claim upon the said obligation wholly and solely through benefits which they claim under an act of August 13, 1894, entitled "An Act for the Protection of Persons Furnishing Material and Labor for the Construction of Public Works," found in Volume 28 of the general statutes of the United States at page 287 and the amendment of said act of February 24, 1905, found in 107 Volume 33 of the United States general statutes at page 811, and the said complainant, and each of the said intervenors are asserting their claims under and by virtue of no other provision; that

the provisions of said act and amendment refer to the construction of structures built entirely upon soil belonging to the United States and has no application to the construction of vessels or the making or completing of chattels.

And for a further affirmative defense to said alleged cause of action this defendant alleges and says as follows:

I.

By reference it asks that paragraphs I, II, III and IV, of its first affirmative defense be made a part of this defense as fully as if set forth at length herein and adopts said paragraphs as a part of this defense.

II.

That the intervenor herein at no time before intervening in the above-entitled action applied for, in the manner required by law, or at all, a copy of the said obligation and had at the time of the commencement of the said action no copy of said bond, and commenced the said action upon the said bond without having first procured a copy thereof or without having in its possession or issued for its use any copy of said bond, and instituted said action without any warrant or authority of law whatsoever.

108 And for a further affirmative defense to said alleged cause of action, this defendant alleges and says as follows:

I.

By reference it asks that paragraphs I, II, III and IV of its first affirmative defense be made a part of this defense as fully as if set forth at length, herein and adopts said paragraphs as a part of this defense.

II.

That the construction of the vessel referred to in said contract and bond has been fully completed and the said steamer accepted by the United States, and that said steamer is now in the service of the United States.

III.

That at the time of the completion of the said vessel the United States had in its hands a large amount of money, the exact amount of which is unknown to this defendant, applicable to the payment of the claims against the said vessel and that the said intervenor, together with the complainant and the other intervenors in this action, are the only creditors of the said Puget Sound Engine Works, Inc., that have claims for labor or material furnished in the construction of the said vessel, and that all the other creditors of the said Puget Sound Engine Works, Inc., if any, are general creditors, having extended credit to it on account of matter foreign to and unconnected with the construction of the said steamer and
109 that the parties to this action are the only persons entitled to participate in the proceeds of said contract and that if

this defendant is liable upon said bond then it is entitled to have the amount due from the United States of America on account of said contract deducted from the amount of its obligation and the said intervenor has failed, refused and neglected, and still refuses to make the United States of America a party defendant to this action that the true amount may be ascertained, if anything there is due upon said bond obligation.

And for a further affirmative defense to said alleged cause of action, this defendant alleges and says as follows:

I.

By reference it asks that paragraphs I, II, III and IV of its first affirmative defense be made a part of this defense as fully as if set out at length herein, and adopts said paragraphs as a part of this defense.

II.

That the statutes laws of the State of Washington, the State in which said vessel was constructed, Vol. 2, Ballinger's Annotated Codes and Statutes of the State of Washington, Section 5952, as amended by an act of the State legislature, approved on the 28th day of February, 1901, entitled "An Act Relating to Liens upon Steamers, Vessels and Boats, their Tackle, Apparel and Furniture, and Amending Section 5953 of Ballinger's Annotated Codes and Statutes of the State of Washington," provides that any person who furnished material in the construction of a vessel in the State of Washington has a lien thereon for the contract price of the reasonable value of such labor and material and that whatever labor or material if any, was furnished to the said Puget Sound Engine Works, Inc., by the said intervenor for use in building said vessel, was furnished and became a part of the said vessel when the same belonged to the Puget Sound Engine Works, Inc. and before the same became the property of the United States, and while the said vessel was subject to a lien for the labor or material furnished to said Puget Sound Engine Works, Incorporated, by intervenor herein.

III.

That the said intervenor stood by and failed and neglected to enforce his lien against the said vessel and suffered the said security for the payment of his claim to be lost, and the said security was ample to pay the full claim of the said complainant and all other parties to this action, and that by reason of the negligence and delay and acts of the said intervenor there has been lost to this defendant all said security to which it would be lawfully entitled upon the payment to the said intervenor and the complainant and other intervenors under said obligation, and that by reason of said action on the part of the said intervenor this defendant has lost its right to be subrogated upon the payment of the said intervenor claim if it be entitled to one, the lien which said intervenor had and could have enforced, but by reason of its negligence failed to do.

Wherefore, this defendant having fully answered, prays that it may go hence without day, and for its costs herein laid out and expended.

GRAVES, PALMER & MURPHY,
*Attorneys for Defendant Title Guaranty and
Trust Company of Scranton, Penna.*

UNITED STATES OF AMERICA,
Western District of Wash., ss:

Clarence S. Parker, being first duly sworn, on oath deposes and says: That he is the General Agent for the State of Washington, of the Title Guaranty and Trust Company of Scranton, Penna., a foreign corporation, and authorized by it to make this verification; that he has heard the foregoing answer read, knows the contents thereof and believes the same to be true.

CLARENCE S. PARKER.

112 Subscribed and sworn to before me this 13th day of October, 1906.

[SEAL.]

C. H. WINDERS,
*Notary Public in and for the State of
Washington, Residing at Seattle,
Wash.*

Due service of the within answer acknowledged and a true copy received this 16th day of October, 1906.

McCLURE & McCLURE.

[Endorsed]: Answer of Title Guaranty and Trust Company to Complaint of Eyres Transfer Company. Filed in the U. S. Circuit Court, Western Dis't of Washington. Oct. 20, 1906. A. Reeves Ayres, Clerk. R. M. Hopkins, Dep.

113 In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,
vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and
The Title Guaranty and Trust Company of Scranton, Penna. (a Corporation), Defendants.

OLYMPIC FOUNDRY COMPANY (a Corporation) et al., Intervenor.

*Answer of Title Guaranty and Trust Company of Scranton, Penna.,
to Complaint in Intervention of Dunham, Carrigan & Hayden
Company.*

Comes now the Title Guaranty and Trust Company of Scranton, Penna., one of the defendants above-named, and insisting upon the

merits of its demurrer filed herein, and not waiving any of the
rights reserved to its use by the record in excepting to the
114 courts ruling upon said demurrer, the said defendant for
answer to the complaint in intervention of Dunham, Carri-
gan & Hayden Company, a corporation, denies and says as follows:

I.

Referring to paragraph V this defendant admits that it executed
as surety to the United States of America a certain construction bond,
wherein and whereby it agreed that its codefendant the Puget Sound
Engine Works, Inc., should fully observe and perform all and sing-
ular *and* covenants, conditions, and agreements contained in that
certain contract for the construction of one steam propeller vessel
known as the steamer "Lieutenant George M. Harris," and that said
bond was further conditioned for the full payment by the said Puget
Sound Engine Works, Inc., to all persons supplying labor or ma-
terials in the prosecution of the work provided for in said contract,
and further admits that said bond was duly executed and delivered
on the 27th day of February, 1906, but denies each and every other
allegation therein contained, and the whole thereof.

II.

Referring to paragraph VI this defendant has no knowledge or
information as to the matters and things therein set forth sufficient
upon which to base a belief, and consequently denies the same and
each and every allegation therein contained, and the whole
115 thereof.

III.

Referring to paragraph VII this defendant has no knowledge or
information as to the matters and things therein set forth sufficient
upon which to base a belief, and consequently denies the same and
each and every allegation therein contained, and the whole thereof.
denies that goods, wares and merchandise were furnished by inter-
venors as therein alleged, of the value of \$88.45, or of any other
value, or in any other manner, or at all, and denies that there is
still due and owing to said intervenor the sum of \$80.20 as therein
alleged, or any other sum or sums, or upon any other account, or
at all.

IV.

Referring to paragraphs II and IV of the intervenor's second
cause of action, this defendant has no knowledge or information as
to the matters and things therein set forth sufficient upon which to
base a belief, and consequently denies the same, and each and every
allegation therein contained, and the whole thereof.

V.

Referring to paragraph III of intervenor's second cause of action,
this defendant has no knowledge or information as to the matters

116 and things therein set forth sufficient upon which to base a belief and consequently denies the same; denies that F. H. Schroeder, doing business as F. H. Schroeder & Company, furnished goods, wares and materials of the value of \$247.17 as therein alleged, or of any other value, or in any other manner, or at all, and denies that there is due and owing for said goods, wares and merchandise the sum of \$223.45 as therein alleged, or any other sum or sums, or in any other manner, or at all.

And for a further affirmative defense to said alleged cause of action, this defendant alleges and says as follows:

I.

That the defendant, Puget Sound Engine Works, Inc., is and at all times herein referred to has been a corporation organized under the laws of the State of Washington with its principal place of business at Seattle, in said State.

II.

That the Title Guaranty and Trust Company of Scranton, Penna., is and at all times herein referred to was a corporation organized under the laws of the State of Pennsylvania and authorized to and doing a general surety business in the State of Washington with its principal place of business at Seattle in said State.

III.

117 That Crane Company, plaintiff herein, is and at all times herein referred to was a corporation organized and existing under and by virtue of the laws of the State of Illinois and during all of said times was and still is transacting business in the city of Seattle, State of Washington.

IV.

That heretofore, to wit, on or about the 17th day of February, 1905, the Puget Sound Engine Works, Inc., entered into a contract with the United States of America by and through F. A. Grant, Captain and Quartermaster of the United States Army stationed at Seattle, Washington, wherein and whereby the said Puget Sound Engine Works, Inc., agreed to furnish all of the labor and material required for and to construct, build and deliver to the United States free from encumbrances, one single screw wooden steamer with engine, boilers, machinery, furniture, etc., which contract is in words and figures as follows, to wit:

This agreement entered into this seventeenth day of February, nineteen hundred and five, between F. A. Grant, Captain and Quartermaster, United States Army, of the first part, and Puget Sound Engine Works, Incorporated, of Seattle, in the county of King, State of —, of the second part, Witnesseth, that the said F. A. Grant Captain and Quartermaster, U. S. Army, for — in behalf of the United States of America, and the said Puget Sound Engine
118 Works, Incorporated, do covenant and agree, to and with each other, as follows:

Article 1. That the said Puget Sound Engine Works, Incorpo-

rated, party of the second part, shall furnish all of the material and labor required and shall construct, complete and deliver to the United States free from encumbrance, one single screw wooden steamer of the dimensions and with the engines, boilers, machinery, tackle, apparel, furniture, etc., as specified and described in the specifications for said vessel, a copy of which specifications is hereto attached and made part hereof. Drawings of the vessel and its engines, boilers and machinery, etc., shall be furnished by and at the expense of the party of the second part as set out in paragraph 5 of the said specifications at page 9 under the head "Drawings."

Article 2. That full access to vessel while under construction, and full facilities for examination of the labor and material shall be given by the said party of the second part to the inspector or inspectors appointed by the party of the first part to supervise the work and such tests of material as may be deemed necessary, shall be made at the expense of the party of the second part under the supervision of such inspector or inspectors and before receiving the finished coat of paint the vessel shall be tested by trial trip of sufficient duration to satisfy the party of the first part of his representative of the satisfactory operation of the vessel and its machinery, which
 119 trial trips shall be made at the expense of the said party of the second part and in manner set out in paragraph 3 page 9 of said specifications.

Article 3. That for and in consideration of the faithful performance of the stipulations of this agreement the party of the second part shall be paid at the office of the disbursing Quartermaster, U. S. Army, Seattle, Washington, as follows:

For the vessel completed according to plans and specifications the total sum of twenty-four thousand eight hundred and eighty-six dollars (\$24886.00). Payment will be made to the party of the second part as the work progresses upon the vessel in the following manner if so desired: Provided that in the opinion of the officer in charge of the work is progressing satisfactorily one-fourth the amount less 20% of the same when labor and material furnished shall equal 25% of the total. A second payment of 15% of the amount less 20% of the same when labor and material furnished shall equal 40% of the total. A third payment of a tenth of the amount less 20% of the same when the labor and material furnished shall equal 50% of the total. A fourth payment of a tenth of the amount less ten per cent 10% of the same when the labor and material furnished shall equal sixty per cent (60%) of the total, and so on until the total amount, less ten per cent (10%) is paid when the vessel is
 120 completed and delivered in accordance with the contract. The sum of this reserved ten per cent (10%) will be paid sixty days after date of delivery and acceptance of the vessel, provided that no defects due to inferior material or bad workmanship have been detected or developed.

Article 4. That the portion of the vessel completed and paid for under said method of partial payments shall become the property of the United States, but the party of the second part shall be responsible for the proper care of such portion of the vessel so paid for until final delivery to and acceptance by the United States as more particularly specified at paragraph 15 at page 6 of said specifications.

Article 5. The said vessel shall be satisfactorily completed as stated in article 6 herein by July 15, 1905, and for each and every day consumed by the party of the second part in excess of that time there shall be paid to the United States as liquidated damages to the said second party the sum of \$50.00 per day, such sum or sums to be deducted from any money due or to become due the said party of the second part.

Article 6. That work on this contract shall commence on or before the 18th day of February, 1905, shall be carried forward with reasonable dispatch and be completed on or before the 15th day of July, 1905.

Article 7. That for and in consideration of the faithful performance of the stipulations of this agreement the party of the second part shall be paid at the office of the disbursing Quartermaster U. S. Army, at Seattle, Washington, as follows: For the vessel completed as specified the total sum of twenty-four thousand, eight hundred and eighty-six dollars (\$24,886.00) as specified in article 3 hereof.

Article 8. That in case of failure of the said party of the second part to comply with the stipulations of this contract according to the true intent and meaning thereof then the party of the first part shall have the power to complete the work at the expense of the party of the second part in such manner as the party of the first part shall deem best for the interests of the public service, either by days' labor and open-market purchases of the necessary material, or by contract, or both, and any excess of cost resulting from such failure shall be charged to the party of the second part.

Article 9. That neither the contract nor any interest therein shall be transferred by the Puget Sound Engine Works, Incorporated, to any other party or parties and any such transfer shall cause the annulment of the contract so far as the United States is concerned; all rights of action, however, for any breach of this contract by the Puget Sound Engine Works, Incorporated, are reserved to the United States.

Article 10. That no member of or delegate to Congress, nor any person belonging to or employed in the military service of the United States, is or shall be admitted to any share or part of this contract, or to any benefit which may arise herefrom, but this stipulation so far as it related to members of or delegates to Congress is not to be construed to extend to this contract.

Article 11. That this contract shall be subject to the approval of the Quartermaster General of the U. S. Army.

In witness whereof, the undersigned hereunto placed their hands the date first hereinbefore written.

Witnesses:

FRANK W. GOODHUE, As to

F. A. GRANT,

Captain and Quartermaster U. S. Army.

CHAS. M. DIAL, As to

PUGET SOUND ENGINE WORKS, INC.

M. L. JONES, As to

By W. O. SULLIVAN, JR., *Pres.*

Office of the Quartermaster, U. S. Army.

SEATTLE, WASHINGTON, *March 2, 1905.*

I hereby certify that I have fully satisfied myself that the party signing the above and foregoing contract for and in behalf of the Puget Sound Engine Works, Inc., contracting party, to wit, W. O. Sullivan, Jr., its president, has the authority to bind the said corporation, and I hereby waive, therefore, the requirement of
 123 evidence from him as to the sufficiency of his authority to so sign and by signing bind said corporation.

F. A. GRANT,
Captain and Quartermaster, U. S. Army.

—and that thereafter, to wit, on the 27th day of February, 1906, after the execution and delivery of the said contract, this defendant executed an obligation in words and figures as follows, to wit:

Contractor's Bond.

(Public Works.)

Know all men by these presents that we, Puget Sound Engine Works, Incorporated, a corporation, existing under the laws of the State of Washington, as principal, and the Title Guaranty and Trust Company of Scranton, Penna., a corporation, existing under the laws of the State of Pennsylvania, as surety, are held and bound unto the United States of America, in the penal sum of ten thousand (\$10,000) dollars, to the payment of such sum well and truly to be made, we bind ourselves and our successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas the above-bounden Puget Sound Engine Works, Incorporated, has on the seventeenth day of February, 1905, entered into a contract with the United States, represented by F. A. Grant, Captain and Quartermaster, U. S. Army, stationed at Seattle, Washington, for
 124 constructing complete and delivering to the United States free from all encumbrance, one steam propeller vessel in accordance with plans and specifications.

Now therefore if the above-bounden Puget Sound Engine Works, Incorporated, shall and will, in all respects, duly and fully observe and perform all and singular the covenants, conditions and agreements in and by the said contract agreed and covenanted by said Puget Sound Engine Works, Incorporated, to be observed and performed according to the true intent and meaning of the said contract, and as well during any period of extension of said contract that may be granted on the part of the United States as during the original term of the same, and shall promptly make full payments to all persons supplying it labor or materials in the prosecution of the work provided for in said contract, then the above obligation shall be void and of no effect: otherwise to remain in full force and virtue.

In witness whereof, the parties hereto have executed this instru-

ment this 27th day of February, 1905, the name and corporate seal of said principal being hereto affixed and these presents duly signed by its president pursuant to a resolution of its Board of Directors, passed on the 15th day of September, 1904, a copy of the record of which is hereto attached; and the name and corporate seal of said surety being hereto affixed and these presents duly signed by its attorney in fact pursuant to resolution of its Board of Directors, passed on the 2d day of April, 1904, a copy of the record of which is on file in the War Department.

By W. O. SULLIVAN, [SEAL.]
[SEAL.]

W. O. SULLIVAN, JR., *President.*

THE TITLE GUARANTY AND TRUST
CO. OF SCRANTON, PENNA., [SEAL.]

By H. A. RASER, *Its Attorney in Fact.*

Attest:

CHAS. M. DIAL,
M. F. JONES,
As to Principal.

Attest:

CHAS. M. DIAL, [SEAL.]
As to Surety.

V.

That the foregoing bond is the only bond executed by this defendant in said connection and is the obligation referred to in the complaint and in the complaints in intervention, and that the same was executed by this defendant and accepted by the United State for its sole benefit and protection, and for the protection of no other person or concern or corporation, and that the same was delivered by this defendant to no person nor for the benefit of any person except the United States, and that the execution of the said bond contract was without consideration as to any party or concern furnishing labor or material to the said Puget Sound Engine Works, Inc., to be used or which was used in the construction of the said vessel, and that the same was wholly without consideration and without authority of law as to the said complainant and intervenors, and each of them, and also without consideration as to the United States of America, and that the said complainant, and each of the said intervenors are seeking and asserting their claim upon the said obligation wholly and solely through benefits which they claim under an act of August 13, 1894, entitled "An Act for the Protection of Persons Furnishing Material and Labor for the Construction of Public Works," found in Volume 28 of the general statutes of the United States at page 287, and the amendment of said act of February 24, 1905, found in Volume 33 of the United States general statutes at page 811, and the said complainant, and each of the said intervenors are asserting their claims under and by virtue of no other provision; that the provisions of said act and amendment refer to the construction of structures built entirely upon soil belonging to the United States and has no application to the construction of vessels or the making or completing of chattels.

And for a further affirmative defense to said alleged cause of action this defendant alleges and says as follows:

127

I.

By reference it asks that paragraphs I, II, III and IV, of its first affirmative defense be made a part of this defense as fully as if set forth at length herein and adopts said paragraphs as a part of this defense.

II.

That the intervenor herein at no time before intervening in the above-entitled action applied for, in the manner required by law, or at all, a copy of the said obligation and had at the time of the commencement of the said action no copy of said bond, and commenced the said action upon the said bond without having first procured a copy thereof or without having in its possession or issued for its use any copy of said bond, and instituted said action without any warrant or authority of law whatsoever.

And for a further affirmative defense to said alleged cause of action, this defendant alleges and says as follows:

I.

By reference it asks that paragraphs I, II, III and IV of its first affirmative defense be made a part of this defense as fully as if set forth at length herein and adopts said paragraphs as a part of this defense.

II.

That the construction of the vessel referred to in said contract and bond has been fully completed and the said steamer accepted
128 by the United States, and that said steamer is now in the service of the United States.

III.

That at the time of the completion of the said vessel the United States had in its hands a large amount of money, the exact amount of which is unknown to this defendant, applicable to the payment of the claims against the said vessel and that the said intervenor, together with the complainant and the other intervenors in this action, are the only creditors of the said Puget Sound Engine Works, Inc., that have claims for labor or material furnished in the construction of the said vessel, and that all the other creditors of the said Puget Sound Engine Works, Inc., if any, are general creditors, having extended credit to it on account of matter foreign to and unconnected with the construction of the said steamer and that the parties to this action are the only persons entitled to participate in the proceeds of said contract and that if this defendant is liable upon said bond then it is entitled to have the amount due from the United States of America on account of said contract deducted from the amount of its obligation and the said intervenor has failed, refused and neglected, and still refuses to make the United States of America a party defendant to this action that the true amount may be ascer-

tained, if anything there is due upon said bond obligation.

129 And for a further affirmative defense to said alleged cause of action, this defendant alleges and says as follows:

I.

By reference it asks that paragraphs I, II, III and IV of its first affirmative defense be made a part of this defense as fully as if set out at length herein, and adopts said paragraphs as a part of this defense.

II.

That the statute laws of the State of Washington, the State in which said vessel was constructed, Vol. 2 Ballinger's Annotated Codes and Statutes of the State of Washington, section 5952, as amended by an act of the state legislature, approved on the 28th day of February, 1901, entitled "An Act Relating to Liens upon Steamers, Vessels and Boats, their Tackle, Apparel and Furniture, and Amending Section 5953 of Ballinger's Annotated Codes and Statutes of the State of Washington," provides that any person who furnished material in the construction of a vessel in the State of Washington has a lien thereon for the contract price of the reasonable value of such labor and material and that whatever labor or material, if any, was furnished to the said Puget Sound Engine Works, Inc., by the said intervenor for use in building said vessel, was furnished and became a part of the said vessel when the same be-

130 belonged to the Puget Sound Engine Works, Inc., and before the same became the property of the United States, and while the said vessel was subject to a lien for the labor or material furnished to said Puget Sound Engine Works, Incorporated, by intervenor herein.

III.

That the said intervenor stood by and failed and neglected to enforce his lien against the said vessel and suffered the said security for the payment of his claim to be lost, and said security, was ample to pay the full claim of the said complainant and all other parties to this action, and that by reason of the negligence and delay and acts of the said intervenor there has been lost to this defendant all said security to which it would be lawfully entitled upon the payment to the said intervenor and the complainant and other intervenors under said obligation and that by reason of said action on the part of the said intervenor this defendant has lost its right to be subrogated upon the payment of the said intervenor's claim if it be entitled to one, the lien which said intervenor had and could have enforced, but by reason of its negligence failed to do.

Wherefore this defendant having fully answered prays that it may go hence without day, and for its costs herein laid out and expended.

GRAVES, PALMER & MURPHY,
*Attorney for Defendant Title Guaranty and
Trust Company of Scranton, Penna.*

131 UNITED STATES OF AMERICA,
Western District of Wash., ss:

Clarence S. Parker, being first duly sworn, on oath deposes and says: That he is the General Agent for the State of Washington, of the Title Guaranty and Trust Company of Scranton, Penna., a foreign corporation, and authorized by it to make this verification; that he has heard the foregoing answer read, knows the contents thereof and believes the same to be true.

CLARENCE S. PARKER.

Subscribed and sworn to before me this 13th day of October, 1906.

[SEAL.]

C. H. WINDERS,
*Notary Public in and for the State of
 Washington, Residing at Seattle, Wash.*

Due service of the within answer acknowledged and a true copy received this 16th day of Oct., 1906.

GRAY & STERN.

[Endorsed:] Answer of Title Guaranty and Trust Company to Complaint of Dunham, Carrigan & Hayden Co. Filed in the U. S. Circuit Court, Western Dist. of Washington, Oct. 20, 1906. A. Reeves Ayres, Clerk. R. M. Hopkins, Dep.

132 In the Circuit Court of the United States for the Western
 District of Washington, Northern Division.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE CO.
 (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and
 The Title Guaranty & Trust Company of Scranton, Penna. (a
 Corporation), Defendants.

OLYMPIC FOUNDRY COMPANY (a Corporation) et al., Intervenor.

*Demurrer of Plaintiff Crane Company to Answer of Title Guaranty
 and Trust Company.*

Comes now the plaintiff, Crane Company, a corporation, and demurs to the answer herein of the defendant, The Title Guaranty and Trust Company of Scranton, Penna., and for grounds of said demurrer states as follows:

1.

The said plaintiff demurs to the first affirmative defense contained in said answer upon the ground and for the reason that the
 133 same does not state facts sufficient to constitute any answer or defense to the complaint of said plaintiff on file herein.

2.

Said plaintiff demurs to the second affirmative defense contained in said answer upon the ground and for the reason that the same does not state facts sufficient to constitute any answer or defense to the complaint of said plaintiff on file herein.

3.

Said plaintiff demurs to the third affirmative defense contained in said answer upon the ground and for the reason that the same does not state facts sufficient to constitute any answer or defense to the complaint of said plaintiff on file herein.

4.

Said plaintiff demurs to the fourth affirmative defense contained in said answer upon the ground and for the reason that the same does not state facts sufficient to constitute any answer or defense to the complaint of said plaintiff on file herein.

H. T. GRANGER,
Attorney for Plaintiff.

UNITED STATES OF AMERICA,
Western District of Wash., ss:

134 I, the undersigned, counsel for the plaintiff herein above named, do hereby certify that in my opinion the foregoing demurrer is meritorious and well founded in law.

H. T. GRANGER,
Attorney for Plaintiff.

Copy of within demurrer received and due service thereof acknowledged this 20th day of Oct., 1906.

GRAVES P. & M.

[Endorsed:] Demurrer of Plaintiff. Filed in the U. S. Circuit Court, Western Dist. of Washington. Oct. 22, 1906. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

In the Circuit Court of the United States, Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and the Title Guaranty and Trust Company of Scranton, Pennsylvania (a Corporation), Defendants; Olympic Foundry Company (a Corporation) et al., Intervenor.

135 *Demurrer of Intervenor Olympic Foundry Company to Affirmative Defenses in Answer of Title Guaranty and Trust Company of Scranton, Pennsylvania.*

Comes now the intervenor, Olympic Foundry Company, a corporation, and demurs to that part of the answer of The Title Guaranty and Trust Company, of Scranton, Pennsylvania, denominated further (first) affirmative defense, upon grounds:

1. That the facts and statements therein contained are insufficient at law to constitute a defense to this intervenor's complaint in intervention, or the cause of action therein contained.

2. That said affirmative defense does not state facts sufficient to constitute any defense to the cause of action set forth in intervenor's complaint filed in this cause.

Intervenor also demurs to that portion of the answer of the defendant Title Guaranty and Trust Company of Scranton, Pennsylvania, denominated further (second) affirmative defense, upon grounds:

1. That the facts and statements therein contained are insufficient at law to constitute a defense to this intervenor's complaint in intervention, or the cause of action therein contained.

2. That said affirmative defense does not state facts sufficient at law to constitute a defense to the cause of action set forth in intervenor's complaint in this cause.

Intervenor also demurs to that portion of the answer of the defendant The Title Guaranty and Trust Company of Scranton, Pennsylvania, denominated further (third) affirmative defense, upon the grounds:

1. That the facts and statements therein contained are insufficient to constitute a defense to this intervenor's complaint in intervention, or the cause of action therein contained.

2. That said affirmative defense does not state facts sufficient to constitute a defense to the cause of action set forth in intervenor's complaint filed in cause.

Intervenor also demurs to that portion of the answer of the defendant Title Guaranty and Trust Company of Scranton, Pennsylvania, denominated further (fourth) affirmative defense, upon grounds:

1. That the facts and statements therein contained are sufficient
t law to constitute a defense to this intervenor's complaint in inter-
vention, or the cause of action therein contained.

2. That said affirmative defense does not state facts sufficient to
constitute a defense to the cause of action set forth in intervenor's
complaint in this cause.

37 Wherefore intervenor prays judgment of this Court
whether he shall make any other or further reply to said
answer.

GRAY & STERN,
Attorneys for Intervenor, Olympic Foundry Company.

I, Jno. G. Gray, of counsel for intervenor, Olympic Foundry
Company, a corporation, do hereby certify that the foregoing de-
murrer to the affirmative defenses in the answer of the Title Guar-
anty and Trust Company, of Scranton, Penna., is in my opinion
well taken and founded in point of law.

JNO. G. GRAY.

STATE OF WASHINGTON,
County of King, ss:

I, Jno. G. Gray, being first sworn, according to law, depose and
say that I am the attorney of Olympic Foundry Company, a cor-
poration, intervenor in this suit, and that the foregoing demurrer is
not interposed for delay; that I make this certification on behalf of
intervenor, as its attorney.

JNO. G. GRAY.

Subscribed and sworn to before me this 18th day of October,
1906.

[SEAL.]

JOSIAH THOMAS,
*Notary Public in and for the State of
Washington, Residing at Seattle.*

138 Service accepted by copy this 18th day of October, 1906.

GRAVES, PALMER & MURPHY,
Att'ys Title Trust & Guaranty Co.

[Endorsed:] Demurrer of Intervenor Olympic Foundry Co. to
Affirmative Defenses in Answer of Title Guaranty & Trust Com-
pany of Scranton, Pa. Filed in the U. S. Circuit Court, Western
Dist. of Washington. Oct. 23, 1906. A. Reeves Ayres, Clerk.
R. M. Hopkins, Dep.

In the United States Circuit Court for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and The Title Guaranty & Trust Company of Scranton, Penna. (a Corporation), Defendants; Olympic Foundry Company (a Corporation) et al., Intervenor.

139 *Order Sustaining Demurrers to Certain Affirmative Defenses in Answer of Title Guaranty and Trust Company.*

Be it remembered, that the above-entitled cause came on regularly for hearing on Monday the 22d day of October, 1906, upon the respective demurrers of the plaintiff and of the intervenors to the first, second, third and fourth affirmative defenses set forth in the answer of the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the defendant, Title Guaranty and Trust Company of Scranton, Penna., appearing by its attorneys, Graves, Palmer & Murphy, the plaintiff by its attorney, H. T. Granger, and the Intervenor, Olympic Foundry Company, a corporation, J. G. Meacham and W. J. Pinard, copartners doing business as Meacham & Pinard, Charles H. Allmond and G. E. Ahlberg, copartners doing business as Charles H. Allmond & Company, Dunham, Carrigan & Hayden Company, a corporation, F. J. Flajole and G. E. Barritt, copartners doing business as Standard Boiler Works, and John E. Good Metal Works, George B. Adair, Henry R. Worthington, Schwabacher Hardware Company, a corporation, Gorham Rubber Company, a corporation, appearing by their attorneys Messrs. Gray & Stern, the intervenor

140 Washington Iron Works, a corporation, appearing by its attorney Everett C. Ellis, the intervenor George Broom appearing by its attorney George K. King, the intervenor L. W. Davis and J. H. Davis, copartners under the firm name and style of Davis & Buxbaum, and the Whiton Hardware Company, a corporation, appearing by their attorneys Messrs. Wardell & Wardell, the intervenors Bowles Company, a corporation. The Marine Manufacturing & Supply Company, a corporation, Sunde & Erland Company, a corporation, and Eyres Transfer Company, a corporation, appearing by their attorneys Messrs. McClure & McClure, the intervenor Puget Sound Machinery Depot, a corporation, appearing by its attorneys Ira Bronson and D. B. Trefethen, the intervenor S. B. Hicks & Sons Company, a corporation, appearing by its attorney S. H. Steele, the intervenors T. J. King and A. Winge, copartners, doing business in the name of King & Winge, and the Vulcan Iron Works, a corporation, appearing by their attorney Benton Embree, the intervenor Frederick & Nelson, a corporation, appearing by its attorneys Messrs.

Wright & Kelleher, the intervenor Pacific Engineering Company, a corporation, appearing by its attorneys Messrs. Kerr & McCord, the intervenor A. H. Holstrom Iron Works, appearing by its attorneys A. A. Anderson and Howard M. Hall, the intervenors Columbia Engineering Works, a corporation, J. T. Fulmele, doing business
 141 as Eagle Iron Foundry, B. D. Bates and R. O. Fraser, copartners doing business as Puget Sound Pattern Works and Westernman Iron Works, a corporation, appearing by their attorneys Messrs. Gray & Stern, the intervenor James Tracy and John Tracy doing business as the Eagle Brass Foundry, appearing by its attorney E. H. Fleuck, the intervenor M. A. Bargar, doing business as M. A. Bargar & Company, appearing by its attorneys Messrs. Cutts & Dorety, and the intervenors James Johnson, F. R. Bates and T. S. Clark, copartners doing business under the name and style of Bates & Clark Company, and B. Manke appearing by their attorney H. T. Granger, the intervenor Lewis, Anderson Ford Company, and Chesley Tow Boat Company appearing by their attorneys Allen, Allen and Stratton, and argument of counsel was had, and the Court being fully advised in the premises, does sustain the demurrer of the plaintiff and the demurrer of the several intervenors to the first, second, third and fourth affirmative defenses interposed in the answer of the defendant, Title Guaranty and Trust Company of Scranton, Penna., to which ruling of the Court the defendant Title Guaranty and Trust Company of Scranton, Penna., excepts, and an exception is allowed.

C. H. HANFORD, *Judge.*

142 [Endorsed:] Order Sustaining Demurrer to Defendant's Answer. Filed in the Circuit Court, Western Dist. of Washington, Nov. 2, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

In the Circuit Court of the United States, Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff.

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company, of Scranton, Pennsylvania (a Corporation), Defendant; Olympic Foundry Company et al., Interveners.

Stipulation as to Claims.

It is hereby mutually agreed by and between the claimants hereinafter named, by their attorneys of record, and The Title Guaranty and Trust Company, of Scranton, Pennsylvania, defendant, by

143 MESSRS. Graves, Palmer & Murphy, that upon a hearing of said cause before the Court, if the testimony of witnesses were produced, and documentary evidence introduced, to sustain the complaint and complaints in intervention, and the denials in the answers thereto, no proof being offered as to the affirmative defenses set out in said answers demurrers to said affirmative defenses having been interposed and sustained, that the proof would show facts as follows:

That on or about the 17th day of February, 1905, the Puget Sound Engine Works, Inc., a corporation, entered into a contract in writing with the Government of the United States of America, for the construction of the "Lieut. Harris," which said contract is set out in the answers of the Title Guaranty and Trust Company to the various complaints in intervention filed herein, and on the 27th day of February, 1905, the Title Guaranty and Trust Company of Scranton, Pennsylvania, made, executed and delivered to the Government of the United States a bond in the sum of ten thousand (\$10,000.00) dollars, which said bond is set out in the answers of the said defendants, Title Guaranty and Trust Company, to the complaint and complaints in intervention herein.

That thereafter the said Puget Sound Engine Works, Inc., entered upon the performance of said contract.

144 That at and between the 1st day of March, 1905, and the 21st day of September, 1905, the various claimants herein-after mentioned, furnished materials and labor to the Puget Sound Engine Works, Inc., for the construction of the "Lieut. Harris," at that time being constructed under contract by and between the Puget Sound Engine Works, Inc., a corporation, and the Government of the United States of America, which material were used and which labor was performed in the construction of said vessel, at and between said dates, and for which there is owing to the various parties hereinafter named, after deducting all payments made by the Puget Sound Engine Works, together with the dividends, aggregating 9.6% paid through the bankruptcy proceedings of the Puget Sound Engine Works, Inc., the sums set opposite their respective names, as follows:

1. Geo. B. Adair, materials, Aug. 8 to Sept. 7/05.....	\$96.08
2. Columbia Engineering Works, material, July 24/05..	251.06
3. Marine Mnfg. & Supply Co., materials, July 19/05....	386.59
4. Gorham Rubber Co., materials, June 17/05 to Sept. 16/05	93.83
5. Henry R. Worthington, materials, June 30/05.....	216.96
6. Westerman Iron Works, materials, April 28, 1905...	667.17
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7. Bates & Clark, materials, August 10/05.....	564.33
8. Meacham & Pinard, materials, June to Sept., 1905...	473.99
9. Whiton Hardware Co., materials, June to Sept., 1905..	117.10
10. Sunde & Erland, materials, June 3 to Sept., 1905.....	12.30
11. Dunham, Carrigan & Hayden Co., materials, May 24 to August 29/05	80.30

12. Dunham, Carrigan & Hayden Co., materials furnished by F. H. Schroeder Co., Sept., 1905.....	223.45
13. Bowles & Co., materials, May 19 to August 31/05....	159.81
14. S. B. Hicks & Sons Co., materials, May 1 to Aug. /05.	181.70
15. Olympic Foundry Co., materials, Apr. 27 to Sep. 12/05	744.29
16. F. J. Flajole and E. F. Barrett, copartners as Standard Boiler Works, July 10 to Aug. 22/05.....	211.54
17. Davis & Buxbaum, materials, July 15 to Sept. 13/05..	245.36
18. B. Mancke, materials, July 31/05.....	31.64
19. Jas. Johnston, labor, August, 1905.....	89.55
20. George Broom, labor, August, 1905.....	40.05
21. Schwabacher Hardware Co., materials, May 4 to Sept. 2/05	526.68

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22. Puget Sound Machinery Depot, materials, July 2 to Sept. 21/05	120.56
23. A. H. Holstrom, materials, July 2 to Sept. 21/05....	325.74
24. Pacific Engineering Works, upon its a/c, and as assignee of Puget Sound Mills & Timber Co., materials, May 2 to Sept. 21/05.....	335.81
25. J. T. Fulmele, doing business as Eagle Iron F'dry, materials, June 30 to Sept. 21/05.....	121.67
26. Jno. E. Good Metal Works, materials, June 1 to July 10, 1905	97.61
27. Frederick & Nelson, materials, June 17 to Sept. 12/05	279.78
28. Crane Co., materials, May 1 to Sept. 21/05.....	1153.51
29. Washington Iron Works, materials, June 3 to Sept. 21/05	51.53
30. Eagle Brass Co., materials, June 3 to Sept. 21/05....	400.00
31. Lewis, Anderson & Ford Co., July 12th to Sept. 14/05	261.26
32. Vulcan Iron Works, June 1st to Sept. 25/05.....	166.14
33. M. A. Bargar & Co., July 1st to Sept. 21/05.....	358.74
34. King & Winge, August 25, 1905.....	43.35

147 That Chas. H. Allmond and G. E. Ahlberg, doing business as Chas. H. Allmond & Co., furnished certain drawings and patterns between May 10, 1905, and September 20, 1905, for which, after deducting all payments and dividends in bankruptcy there remains unpaid the sum of \$167.87; that said drawings and patterns were used for the making and casting of certain metal parts of the said "Lieut. Harris," which said metal parts so cast from said drawings and patterns were used in the actual construction of said boat.

That B. D. Bates and R. O. Fraser, doing business as Puget Sound Pattern Works, furnished certain drawings and patterns between the 29th day of June, 1905, and the 21st day of September, 1905, for which, after deducting all payments and dividends in bankruptcy there remains unpaid the sum of \$82.56; that said drawings and patterns were used for the making and casting of certain metal parts of the said "Lieut. Harris," which said metal parts so cast from said

drawings and patterns were used in the actual construction of said boat.

That the Chesley Tow Boat Company, between the 1st day of June, 1905, and the 2d day of August, 1905, furnished certain towing and wharfage for materials furnished by the Puget Sound Engine Works, Inc., for the construction of the said "Lieut. Harris," that said materials so towed and wharfed by the said Chesley Tow
148 Boat Company, entered into the actual construction of the said "Lieut. Harris," and the balance due thereon, after deducting all payments, is \$83.17.

That the Eyres Transfer Company, at and between the 1st day of May, 1905, and the 21st day of September, 1905, were engaged in the business of carting, and during said period rendered service to the Puget Sound Engine Works, Inc., by carting from the various docks to the plant of the Puget Sound Engine Works, Inc., and other places in the City of Seattle certain material for use in the construction of the "Lieut. Harris," and paid the advance charges thereon to carriers from whom they received the same; said advance charges so paid amounted to \$55.32; and all of said materials so carted and upon which charges were so paid, were used in the actual construction of said steamer "Lieut. Harris," and there remains unpaid to the said Eyres Transfer Company, after deducting all payments and dividends in bankruptcy, the sum of \$79.37.

That the "Lieut. Harris" was completed September 21, 1905; that no action was brought by the Government of the United States within six months thereafter, upon said bond; that this action was brought within one year from and after September 21st, 1905.
149 Dated at Seattle, in said district, this 13th day of December, 1906.

IRA BRONSON AND
D. B. TREFETHEN,

Att'y for Puget Sound Machinery Depot.
GRAVES, PALMER & MURPHY,
Attorneys for Defendant Title
Guaranty & Trust Company.

McCLURE & McCLURE,
Att'ys for Marine Mfg. Co., Sunde & Erland,
Eyres Transfer Co., Bowles & Co.

S. H. STEELE,
Att'y for S. B. Hicks & Sons Co.

H. T. GRANGER,
Att'y for Bates & Clark, B. Mancke,
James Johnson, Crane Co.

A. A. ANDERSON,
Att'y for A. H. Holstrom.

GEO. H. KING,
Att'y for George Broom.

WARDALL & WARDALL,
Att'ys for Whiton Hardware Co.
and Davis & Burbaum.

150

KERR & McCORD,

Att'ys for Pacific Engineering Co.

WRIGHT & KELLEHER,

Att'ys for Frederick & Nelson.

EVERETT C. ELLIS,

Att'y for Washington Iron Works.

FLUECK & BEBB,

Att'ys for Eagle Brass Foundry.

CUTTS & DORETY,

Att'ys for M. A. Barger & Company.

ALLEN, ALLEN & STRATTON,

*Att'ys for Chesley Tow Boat Co. and**Lewis, Anderson & Foard Co.*

BENTON EMBREE,

Att'y for Vulcan Iron Works.

GRAY & STERN,

*Att'ys for all Claimants Herein**not Specifically Named.*

BENTON EMBREE,

Att'y for King & Winge.

['[Endorsed:] Stipulation as to claims. Filed in the U. S. circuit court, western dist. of Washington. Dec. 13, 1906. A. Reeves Ayres, clerk. W. D. Covington, dep.

151 In the Circuit Court of the United States for the Western District of Washington. Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company of Scranton, Penna. (a Corporation), Defendant, and Olympic Foundry Company et al., Interveners.

Notice of Motion for Submission and Judgment on Pleadings and Stipulation.

To the defendant Title Guaranty & Trust Company of Scranton, Penna., and to Messrs. Graves, Palmer & Murphy, its attorneys:

You, and each of you, are hereby notified that the motion for submission of the above-entitled cause and for judgment, hereunto annexed, will be brought on for hearing before the above-entitled court at ten o'clock A. M. Monday, December 17, 1906.

152 in the United States courtroom, at the northeast corner of

Fourth Avenue and Marion Street, Seattle, Washington, or as soon thereafter as counsel can be heard.

IRA BRONSON AND

D. B. TREFETHEN,

Att'ys for Puget Sound Machinery Depot.

McCLURE & McCLURE,

Att'ys for Marine Mfg Co., Sunde & Erland,

Eyres Transfer Co., Bowles Co.

S. H. STEELE,

Att'y for S. B. Hicks & Sons Co.

H. T. GRANGER,

Att'y for Bates & Clark, Manke & Grace,

James Johnson, Crane Co.

A. A. ANDERSON, *Att'y for A. H. Holstrom.*

GEO. H. KING, *Att'y for George Broom.*

WARDALL & WARDALL,

Att'ys for Whiton Hardware Co. and

Davis & Busbaum.

KERR & McCORD,

Att'ys for Pacific Engineering Co.

WRIGHT & KELLEHER,

Att'y for Frederick & Nelson.

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E. E. ELLIS,

Att'y for Washington Iron Works.

FLUECK & BEBB,

Att'ys for Eagle Brass Foundry.

CUTTS & DORETY,

Att'ys for M. A. Bargar & Company.

ALLEN, ALLEN & STRATTON,

Att'ys for Chesley Tow Boat Co. and

Lewis, Anderson & Foard Co.

BENTON EMBREE,

Att'y for Vulcan Iron Works and King & Winge.

GRAY & STERN,

Attorneys for all Claimants Herein

not Specifically Named.

154 In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company of Scranton, Pennsylvania (a Corporation), Defendant, and Olympic Foundry Company et al., Intervenor.

Motion to Submit Cause and for Judgment upon Pleadings and Stipulation.

Come now the relator and intervenors herein by their attorneys of record and move the Court that the above-entitled cause be sub-

mitted upon the allegations of the complaint and the complaints in intervention, and the admissions of the answers thereto, and the stipulation of the parties herein as to the claims of relator and intervenors herein, and each of them, and further move the Court for judgment against the defendant, Title Guaranty & Surety Company, of Scranton, Pennsylvania, in favor of the relator, Crane & Company, and the intervenors herein, and each of them, for the amounts due and owing to each of them as set forth and enumerated in the stipulation filed in this proceeding in the clerk's office on the 13th day of December, A. D. 1906, together with legal interest from the date of the delivery of the last item of merchandise, or the performance of the last labor performed by the various claimants herein as shown by said stipulation, together with costs.

IRA BRONSON AND

D. B. TREFETHEN,

Att'ys for Puget Sound Machinery Depot.

McCLURE & McCLURE,

Att'ys for Marine Mfg. Co., Sunde & Erland,

Eyres Transfer Co., Bowles Co.

S. H. STEELE,

Att'y for S. B. Hicks & Sons Co.

H. T. GRANGER,

Att'y for Bates & Clark, Manke & Grace,

James Johnson, and Crane Co.

A. A. ANDERSON,

Att'y for A. H. Holstrom.

GEO. H. KING,

Att'y for George Broom.

WARDALL & WARDALL,

Att'y- for Whiton Hardware Co. and Davis & Buxbaum.

KERR & McCORD,

Att'y- for Pacific Engineering Co.

WRIGHT & KELLEHER,

Att'y- for Frederick & Nelson.

EVERETT C. ELLIS,

Att'y for Washington Iron Works.

FLUECK & BEBB,

Att'y- for Eagle Brass Foundry.

CUTTS & DORETY,

Att'ys for M. A. Barger & Company.

ALLEN, ALLEN & STRATTON,

Att'ys for Chesley Tow Boat Co. and

Lewis, Anderson & Foard Co.

BENTON EMBREE,

Att'y for Vulcan Iron Works and King & Winge.

GRAY & STERN,

Att'ys for all Claimants Herein not Specifically Named.

Service of the within notice and motion admitted by copy this 14th day of Dec. 1906.

GRAVES, PALMER & MURPHY.

Attorneys for Title Trust and Guaranty Co., Def't.

157 [Endorsed:] Notice and Motion to Submit Cause and for Judgment upon Pleading and Stipulation. Filed in the U. S. Circuit Court, Western Dist. of Washington. Dec. 14, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

In the Circuit Court of the United States, Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company of Scranton, Penna. (a Corporation), Defendants; Olympic Foundry Company et al., Interveners.

Findings of Fact and Conclusions of Law.

This cause having come on regularly to be heard before the court upon the motion of the relator, Crane Company, and the intervenors hereinafter named, to submit said cause and for judgment
 158 upon the complaint of the said relator and the complaints in intervention of the said intervenors, and the admissions in the answers of the defendant, Title Guaranty & Trust Company of Scranton, Penna., a corporation, to the said complaint of the relator and the complaints in intervention of the said intervenors, and the stipulation of the parties as to facts, signed and filed in the office of the clerk of this court on the 13th day of December, 1906, the said Crane Company appearing by its attorney, H. T. Granger; the intervenors, Puget Sound Machinery Depot, by Ira Bronson and D. B. Trefethen; Marine Mfg. Company, Sunde & Erland, Eyres Transfer Company and Bowles Company by McClure & McClure, their attorneys; S. B. Hicks & Sons Co. by S. H. Steele, its attorney; Bates & Clark, B. Mancke and James Johnston by H. T. Granger, their attorney; A. H. Holstrom by A. A. Anderson, his attorney; George Broom by Geo. H. King, his attorney; Whiton Hardware Co. and Davis & Buxbaum by Wardall & Wardall, its attorneys; Pacific Engineering Co. by Kerr & McCord, its attorneys; Frederick & Nelson, by Wright & Kelleher, their attorneys; Washington Iron Works, by Everett C. Ellis, its attorney; Eagle Brass Foundry, by Flueck & Bebb, its attorneys; M. A. Barger & Company, by Cutts & Dorety, its attorneys; Chesley Tow Boat Co. and Lewis, Anderson & Ford Co., by Allen, Allen & Stratton, their attorneys;
 159 Vulcan Iron Works and King & Winge, by Benton Embree, their attorney; George B. Adair, Columbia Engineering Works, Gorham Rubber Co., Henry R. Worthington, Westernman Iron Works, Meacham & Pinard, Dunham, Carrigan & Hayden Co., Olympic Foundry Co., Standard Boiler Works, Schwabacher Hardware Co., J. T. Fulmele, Jno. E. Good Metal Works, Chas. H. All-

mond & Company and Puget Sound Pattern Works, by Gray & Stern, their attorneys; and the Court, having considered the pleadings and said stipulation and having duly considered the law, and being fully advised in the premises, grants said motion as prayed for, and now makes the following findings of fact and conclusions of law:

Findings of Fact.

1. That the relator, Crane Company, and the said intervenors are respectively legally constituted as corporations, partnerships, or individuals, doing business as sole traders, as is more particularly shown in the complaint of the relator and in the respective complaints in intervention on file herein.

2. That the Title Guaranty and Trust Company of Scranton, Penna., is a corporation organized and existing under the laws of the State of Pennsylvania, and duly authorized to do business as a surety company under the laws of the State of Washington.

3. That on the 17th day of February, 1905, the Puget Sound Engine Works, Inc., a corporation, entered into a contract with the United States of America, by and through F. A. Grant, Captain and Quartermaster of the United States Army, acting for and in behalf of the United States of America, wherein and whereby the said Puget Sound Engine Works, Inc., agreed to furnish all of the material and labor required for, and to construct, build and deliver to the said United States of America, free from encumbrance, one single screw wooden steamer, with engine, boilers, machinery, tackle, apparel, furniture, etc., which said contract is particularly set forth in the said answer of the defendant, the Title Guaranty and Trust Company of Scranton, Penna., and which said contract was duly approved by the Quartermaster General of the United States army.

4. That on the 27th day of February, 1905, the said Title Guaranty and Trust Company of Scranton, Penna., made, executed and delivered to the United States of America, a bond in the sum of ten thousand dollars (\$10 000), which said bond was conditioned as alleged in the complaint of the relator and in the several complaints in intervention filed herein, and as particularly set forth in the answer of the defendant, the Title Guaranty and Trust Company of Scranton, Penna., to the various complaints in intervention filed herein.

5. That thereafter the said Puget Sound Engine Works, Inc., entered upon the performance of said contract.

6. That on and between the 1st day of March, 1905, and the 21st day of September, 1905, the relator, Crane Company, and the several intervenors, hereinafter named, furnished materials and performed labor for the said Puget Sound Engine Works, Inc., for the construction of the said vessel, "Lieut. Harris," at that time being constructed in pursuance of said contract by and between the Puget Sound Engine Works, Inc., and the United States of America, which said materials so furnished were used, and which said labor was performed, in the construction of said vessel at and between

said dates, and for which there is owing to the various parties, relator, Crane Company, and intervenors hereinafter named, after deducting all payments, including dividends aggregating 9.6%, paid through the bankruptcy of the said Puget Sound Engine Works, Inc., the sums set after the respective names of the said relator, Crane Company, and the intervenors herein as follows:

Geo. B. Adair, materials, Aug. 8, to Sept. 7, 1905.....	\$96.08
Columbia Engineering Works, materials, July 24, 1905..	250.06
Marine Mfg. & Supply Co., materials, July 19, 1905....	386.59
Gorham Rubber Co., materials, June 17, 1905, to Sept. 16, 1905	93.83
162 Henry R. Worthington, materials, June 30, 1905..	216.96
Westerman Iron Works, materials, April 28, 1905..	667.17
Bates & Clark, materials, August 10, 1905.....	564.33
Meacham & Pinard, materials, June to Sept., 1905.....	473.99
Whiton Hardware Co., materials, June to September, 1905..	117.10
Sunde & Erland, materials, June 3 to Sept., 1905.....	12.30
Dunham, Carrigan & Hayden Co., materials, May 24 to August 29, 1905	80.20
Dunham, Carrigan & Hayden Co., materials, furnished by F. H. Schroeder Co., Sept. 1905.....	223.45
Bowles Co., materials, May 19 to Aug. 31, 1905.....	159.81
S. B. Hicks & Sons Co., materials, May 1 to Aug. 1905..	181.70
Olympic Foundry Co., materials, Apr. 27 to Sept. 12, 1905..	744.29
F. J. Flajole and E. F. Barrett, copartners as Standard Boiler Works, July 10 to Aug. 22, 1905.....	211.54
Davis & Baxbaum, materials, July 15 to Sept. 13, 1905..	245.36
B. Mancke, materials, July 31, 1905.....	31.64
163 Jas. Johnston, labor, August, 1905.....	89.55
George Broom, labor, August, 1905.....	40.05
Schwabacher Hardware Co., materials, May 4 to Sept 2, 1905	526.68
Puget Sound Machinery Depot, materials, July 2 to Sept. 21, 1905	120.56
A. H. Holstrom, materials, July 2 to Sept. 21, 1905.....	325.74
Pacific Engineering Works, upon its account and as assignee of Puget Sound Mills & Timber Co., materials, May 2 to Sept. 21, 1905.....	335.81
J. T. Fulmele, doing business as Eagle Iron Foundry, materials, June 30 to Sept. 21, 1905.....	121.07
Jno. E. Good Metal Works, materials, June 1 to July 10, 1905	97.61
Frederick & Nelson, materials, June 17 to Sept. 12, 1905..	279.78
Crane Company, materials, May 1 to Sept. 21, 1905....	1153.51
Washington Iron Works, materials, June 3 to Sept. 21, 1905	51.53
Eagle Brass Co., materials, June 3 to Sept. 21, 1905.....	400.00
Lewis Anderson & Foard Co., July 12 to Sept. 14, 1905	261.25
164 Vulcan Iron Works, June 1 to Sept. 25, 1905....	161.14
M. A. Barger & Co., July 1 to Sept. 21, 1905....	358.74

King & Winge, Aug. 25, 1905.....	43.35
Chas. H. Allmond & Co., May 10 to Sept. 20, 1905.....	167.87
Puget Sound Pattern Works, June 1 to Aug. 2, 1905.....	82.56
Chesley Tow Boat Co., June 1, 1905, to Aug. 2, 1905.....	83.17
Eyres Transfer Company, May 1 to Sept. 21, 1905.....	79.37

7. That the said work of the construction of said vessel, "Lieut. Harris," was fully completed on the 22d day of September, 1905, and that no action has been brought on said bond by the United States of America, and that more than six months have elapsed since the work of construction of said steamer, as provided in said contract.

8. That this action was brought within one year from and after the 21st day of September, 1905.

9. That due notice of the pendency of this action was published for the time required by statute in the "Seattle Post-Intelligencer," daily, said first publication being on the — day of May, 1906, and final publication on the — day of June, 1906, and further due notice of the pendency of said action was served upon each and every known claimant of the said Puget Sound Engine Works, Inc., by a duly attested copy of said notice so published being mailed by the clerk of this court to said creditors at their last known place of address, as required by law.

Done in open court this 19th day of December, 1906.

C. H. HANFORD, *Judge.*

Conclusions of Law.

As conclusions of law the court finds:

1. That the defendant, the Title Guaranty and Trust Company of Scranton, Penna., is indebted to the relator, Crane Company, and to the intervenors herein in the respective sums set out in finding No. 6 of the above findings of fact.

2. That the relator, Crane Company, and the intervenors herein, and each of them, are entitled to judgment against the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, in the respective sums set out in said finding No. 6, with interest thereon at the legal rate from the date of the last item of material furnished or labor performed, as set forth in said finding.

3. That the relator, Crane Company, and the intervenors herein are entitled to recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, their costs herein expended to be taxed.

Let judgment be entered in accordance herewith.

Done in open court this 19th day of December.

C. H. HANFORD, *Judge.*

[Endorsed:] Findings of Facts and Conclusions of Law. Filed in the U. S. Circuit Court, Western Dist. of Washington. Dec. 19, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

In the Circuit Court of the United States, Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

VS.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company of Scranton, Penna. (a Corporation), Defendant; Olympic Foundry Company et al., Intervenor.

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Judgment.

This cause having come on regularly for hearing upon the motion of the relator, Crane Company, and the intervenors herein for judgment against the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, upon the pleadings and the proofs, and in particular upon the stipulation as to facts, said stipulation having been filed herein on the 13th day of December, 1906; counsel for the relator and for the respective intervenors and for the defendant, Title Guaranty and Trust Company of Scranton, Penna., appearing; and said motion having been duly argued and submitted to the Court for consideration and decision, and the Court, after due consideration, having granted said motion and having made and directed to be entered herein its findings and decision in writing and ordered that judgment be entered in this cause in accordance therewith:

Now, therefore, by virtue of the law and by reason of the findings and decision aforesaid, it is hereby ordered, considered and adjudged as follows:

1. That Crane Company do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of eleven hundred fifty-three and 51/100 dollars (\$1153.51), with costs taxed at (\$187.95) dollars.

168 2. That Geo. B. Adair do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of ninety-six and 8/100 dollars (\$96.08), with costs taxed at (\$11.30) dollars.

3. That Columbia Engineering Works do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of two hundred fifty-one and 6/100 dollars (\$251.06), with costs taxed at (\$11.80) dollars.

4. That Marine Mfg & Supply Co. do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of three hundred eighty-six and 59/100 dollars (\$386.59) with costs taxed at (\$12.10) dollars.

5. That Gorham Rubber Co. do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of ninety-three and 83/100 dollars (\$93.83), with costs taxed at (\$10.90) dollars.

6. That Henry R. Worthington do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of two hundred sixteen and 96/100 dollars (\$216.96), with costs taxed at (\$11.10) dollars.

7. That Westerman Iron Works do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of six hundred sixty-seven and 17/100 dollars (\$667.17), with costs taxed at (\$11.90) dollars.

8. That Bates & Clark do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of five hundred sixty-four and 33/100 dollars (\$564.33), with costs taxed at (\$12.10) dollars.

9. That Meacham & Pinard do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of four hundred seventy-three and 99/100 dollars (\$473.99), with costs taxed at (\$10.90) dollars.

10. That Whiton Hardware Co. do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of one hundred seventeen and 10/100 dollars (\$117.10), with costs taxed at (\$11.40) dollars.

11. That Sunde & Erland do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of twelve and 30/100 dollars (\$12.30), with costs taxed at (\$11.60) dollars.

12. That Dunham, Carrigan & Hayden Co. do have and recover of and from the defendant, Title Guaranty and Trust Company, of Scranton, Penna., a corporation, the sum of eighty and 20/100 dollars (\$80.20), with costs taxed at — dollars.

13. That Dunham, Carrigan & Hayden Co. do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of two hundred twenty-three and 45/100 dollars (\$223.45), with costs taxed at (\$12.20) dollars.

14. That Bowles Co. do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of one hundred fifty-nine and 81/100 dollars (\$159.81), with costs taxed at (\$12.30) dollars.

15. That S. B. Hicks & Sons Co. do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of one hundred eighty-one and 70/100 dollars (\$181.70), with costs taxed at (\$11.80) dollars.

16. That Olympic Foundry Co. do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of seven hundred forty-four and 29/100 dollars (\$744.29), with costs taxed at (\$12.60) dollars.

17. That J. J. Flajole and E. F. Barrett, copartners as Standard Boiler Works, do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of two hundred eleven and 54/100 dollars (\$211.54), with costs taxed at (\$10.90) dollars.

18. That Davis & Buxbaum do have and recover of and from the defendant Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of two hundred forty-five and 36/100 dollars (\$245.36), with costs taxed at (\$12.00) dollars.

19. That B. Mancke do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of thirty-one and 64/100 dollars (\$31.64), with costs taxed at (\$12.10) dollars.

20. That Jas. Johnson do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of eighty-nine and 55/100 dollars (\$89.55), with costs taxed at (\$12.10) dollars.

21. That George Broom do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of forty and 5/100 dollars (\$40.05), with costs taxed at (\$11.90) dollars.

22. That Schwabacher Hardware Co. do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of five hundred twenty-six and 68/100 dollars (526.68), with costs taxed at (\$10.99) dollars.

172 23. That Puget Sound Machinery Depot do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of one hundred twenty and 56/100 dollars (\$120.56), with costs taxed at (\$11.80) dollars.

24. That A. H. Holstrom do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of three hundred twenty-five and 74/100 dollars (\$325.74), with costs taxed at (\$12.10) dollars.

25. That Pacific Engineering Works, upon its account, and as assignee of Puget Sound Mills & Timber Co., do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of three hundred and thirty-five and 81/100 dollars (\$335.81), with costs taxed at (\$11.90) dollars.

26. That J. T. Fulmele, doing business as Eagle Iron Foundry, do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of one hundred twenty-one and 67/100 dollars (\$121.67), with costs taxed at (\$11.90) dollars.

27. That Jno. E. Good Metal Works do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of ninety-seven and 61/100
173 dollars (\$97.61), with costs taxed in the sum of (\$10.90) dollars.

28. That Frederick & Nelson do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of two hundred seventy-nine and 78/100 dollars (\$279.78), with costs taxed at (\$12.10) dollars.

29. That Washington Iron Works do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton,

Penna., a corporation, the sum of fifty-one and 53/100 dollars (\$51.53), with costs taxed at (\$11.60) dollars.

30. That Eagle Brass Co. do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of four hundred dollars (\$400), with costs taxed at (\$12.10) dollars.

31. That Lewis, Anderson & Foard Co. do have and recover of and from the defendant, Title Guaranty and Trust Company, of Scranton, Penna., a corporation, the sum of two hundred sixty-one and 26/100 dollars (\$261.26), with costs taxed at (\$12.00) dollars.

32. That Vulcan Iron Works do have and recover of and from the defendant, Title Guaranty and Trust Company, of Scranton, a corporation, the sum of one hundred sixty-one and 14/100 dollars (\$161.14), with costs taxed at (\$12.20) dollars.

174 33. That M. A. Barger & Co. do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of three hundred fifty-eight and 74/100 dollars (\$358.74), with costs taxed at (\$12.10) dollars.

34. That King & Winge do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of forty-three and 35/100 dollars (\$43.35), with costs taxed at (\$12.00) dollars.

35. That Chas. H. Allmond & Company do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of one hundred sixty-seven and 87/100 dollars, with costs taxed at (\$10.90) dollars.

36. That Puget Sound Pattern Works do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of eighty-two and 56/100 dollars (\$82.56), with costs taxed at (\$10.90) dollars.

37. That the Chesley Tow Boat Company do have and recover of and from the defendant, Title Guaranty and Trust Company of Scranton, Penna., a corporation, the sum of eighty-three and 17/100 dollars (\$83.17), with costs taxed at (\$11.80) dollars.

38. That Eyres Transfer Company do have and recover of and from the defendant, Title Guaranty and Trust Company of
175 Scranton, Penna., a corporation, the sum of seventy-nine and 37/100 dollars (\$79.37), with costs taxed at (\$11.80) dollars.

39. That said amounts hereinabove decreed, and each of them, shall bear interest at the legal rate from this date until paid.

Done in open court this 19th day of December, 1906.

C. H. HANFORD, *Judge*.

[Endorsed:] Judgment. Filed in the U. S. Circuit Court, Western Dist. of Washington. Dec. 19, 1906. A. Reeves Ayres, Clerk.
A. N. Moore, Dep.

In the Circuit Court of the United States, Western District of Washington, Northern Division.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company of Scranton, Penna. (a Corporation), Defendants; Olympic Foundry Company et al., Intervenor.

176 *Exceptions of Title Guaranty and Trust Company to Order Granting Motion for Judgment, etc., and Allowance Thereof.*

To the order of the Court granting the plaintiff's and intervenors' motion for judgment herein, and to the finding of fact numbered 5 and to that part of finding numbered 6 relating to the claim of Charles H. Allmond & Co., the claim of the Puget Sound Pattern Works, the claim of Chesley Tow Boat Company, and the claim of Eyres Transfer Company, and to the conclusions of law numbered 1, 2 and 3, and to the judgment herein, and to each part thereof, and especially to the subdivisions 1 to 39, each inclusive, and to each of said subdivisions and to the entry of each of said items and to each of said subdivisions of the said decree the defendant, the Title Guaranty and Trust Company of Scranton, Penna., duly excepted in open court at the time said entries were made, and the said exceptions and each of them were duly allowed by the Court.

Dated this 19th day of December, 1906.

C. H. HANFORD, Judge.

[Endorsed:] Order. Filed in the U. S. Circuit Court, Western Dist. of Washington, Dec. 19, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

177 In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and THE Title Guaranty and Trust Company of Scranton, Pennsylvania (a Corporation), Defendants.

Memorandum of Costs Claimed by Crane Company against Title Guaranty and Trust Company of Scranton, Pennsylvania, a Corporation, Defendant.

Comes now Crane Co., relator herein, and claims the following items of costs against the defendant, The Title Guaranty and Trust Company of Scranton, Pennsylvania, a corporation, as, to wit:

Clerk's fees (advanced \$13.30).....	\$29.80
Marshal's fee serving defendant.....	2.15
178 Clerk's fee printing and sending out certified notices to creditors	102.00
"Post-Intelligencer," publishing notices to creditors.....	44.00
Statutory docket attorney's fee.....	10.00
Total	\$187.95

CRANE CO.,
A Corporation,
By H. T. GRANGER,
Its Attorney.

STATE OF WASHINGTON,
King County, ss:

I, J. R. McDonnell, being first duly sworn, on oath say that I am a clerk employed by H. T. Granger, attorney for the relator, Crane Co. That I have personal knowledge of the expenditures above set forth. That the same were proper and necessary in the transaction of the above-entitled action, and that said disbursements have been made by the said relator in said action.

J. R. McDONNELL.

Subscribed and sworn to before me this 17th day of December, 1906.

[SEAL.]

JOSIAH THOMAS,
Notary Public in and for the State of
Washington, Residing in Seattle.

[Endorsed:] Memorandum of Costs Claimed by Crane Co.
179 Filed in the U. S. Circuit Court, Western Dist. of Washing-
ton. Dec. 18, 1906. A. Reeves Ayres, Clerk. W. D. Cov-
ington, Dep.

In the Circuit Court of the United States, Western District of
Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COM-
PANY, (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE
Guaranty & Trust Company of Scranton, Pa. (a Corporation),
Defendants; Olympic Foundry Company et al., Intervenor.

*Memoranda of Costs to be Taxed in Favor of Olympic Foundry
Company, Intervenor, Against Title Guaranty and Trust Com-
pany of Scranton, Pa., Defendant.*

To the Clerk of the Above-entitled Court:

Comes now intervenor, Olympic Foundry Company, and claims
its costs herein as follows:

180	To clerk's fees.....	2.60
	To statutory attorney's fee (docket).....	\$10.00
	Total	\$12.60

OLYMPIC FOUNDRY COMPANY,
Intervenor,
 By GRAY & STERN, *Its Attorneys.*

STATE OF WASHINGTON,
County of King, ss:

Jno. G. Gray, being duly sworn, deposes and says, that he is one of the attorneys for intervenor in the above-entitled action; that the items of the foregoing cost bill are just, true and correct and that the disbursements itemized therein have been necessarily incurred in said action, and that the services therein charged have been actually and necessarily performed, as therein stated.

JNO. G. GRAY.

Subscribed and sworn to before me this 17th day of December, 1906.

[SEAL.]

JOSIAH THOMAS,
Notary Public in and for the State of
Washington, Residing at Seattle.

[Endorsed:] Memoranda of Costs to be Taxed in Favor of Olympic Foundry Co., Intervenor, against Title Guaranty & Trust Co. of Scranton, Pennsylvania, Defendant. Filed in the U. S. Circuit Court, Western Dist. of Washington. Dec. 18, 1906.
 181 A. Reeves Ayres, Clerk. By W. D. Covington, Dep.

In the Circuit Court of the United States, Western District of
 Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company of Scranton, Pa. (a Corporation), Defendants; Olympic Foundry Company et al., Intervenor.

Memoranda of Costs to be Taxed in Favor of Dunham, Carrigan & Hayden Company, Intervenor, Against Title Guaranty and Trust Company of Scranton, Pa., Defendant.

To the Clerk of the Above-entitled Court:

Comes now intervenor Dunham, Carrigan & Hayden Company, and claims its costs herein as follows:

182	To clerk's fees	\$2.20
	To statutory attorney's fee (docket)	10.00
	Total	\$12.20

DUNHAM, CARRIGAN & HAYDEN CO.,

*Intervenor,*By GRAY & STERN, *Its Attorneys.*

STATE OF WASHINGTON,

County of King, ss:

Jno. G. Gray, being duly sworn, deposes and says, that he is one of the attorneys for intervenor in the above-entitled action; that the items of the foregoing cost bill are just, true and correct, and that the disbursements itemized therein have been necessarily incurred in said action, and that the services therein charged have been actually and necessarily performed, as therein stated.

JNO. G. GRAY.

Subscribed and sworn to before me this 17th day of December, 1906.

[SEAL.]

JOSIAH THOMAS,

*Notary Public in and for the State of
Washington, Residing at Seattle.*

[Endorsed:] Memoranda of Costs to be Taxed in Favor of Dunham, Carrigan & Hayden Co., Intervenor, against Title Guaranty & Trust Co. of Scranton, Pa., Defendant. Filed in the U. S. Circuit Court, Western Dist. of Washington. Dec. 18, 1906.

183 A. Reeves Ayres, Clerk. W. D. Covington, Dep.

In the Circuit Court of the United States, Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company of Scranton, Pa. (a Corporation), Defendants; Olympic Foundry Company et al., Intervenor.

Memoranda of Costs to be Taxed Against Defendant Title Guaranty and Trust Company of Scranton, Penna., in Favor of Eyres Transfer Co.

To the Clerk of the Above-entitled Court:

Comes now Eyres Transfer Co., by McClure & McClure, its attorneys, and presents its statement of costs in the above-entitled matter as follows:

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Clerk's fees.....	\$1.80
Attorney's docket fee.....	10.00
Total	\$11.80

McCLURE & McCLURE,
Attorneys for Intervenor Eyres Transfer Co.

STATE OF WASHINGTON,
County of King, ss:

Walter A. McClure, being first duly sworn, on oath says: I am one of the attorneys for the above-named intervenor; that the above and foregoing statement of costs is just, true and correct, and that said costs have been necessarily incurred in the prosecution of this action; that I make this — in behalf of said intervenor for the reason that as counsel for said intervenor the facts as to said disbursements are within my knowledge.

WALTER A. McCLURE,

Subscribed and sworn to before me this 17th day of December, 1906.

[SEAL.]

EDWIN C. EWING,
Notary Public in and for the State of
Washington, Residing at Seattle.

[Endorsed:] Statement of Costs to be Taxed Against Title Guaranty and Trust Company of Scranton, Penna. in Favor of Eyres Transfer Co. Filed in the U. S. Circuit Court, Western Dist. 185 of Washington, Dec. 18, 1906. A. Reeves Ayres, Clerk. By W. D. Covington, Dep.

In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE & Co. (a Corporation), Plaintiff.

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and THE TITLE Guaranty and Trust Company of Scranton, Penna. (a Corporation), Defendants; Olympic Foundry Company et al., Intervenor.

Exceptions of Title Guaranty & Trust Company to Cost Bills.

Now comes the above-entitled defendant, the Title Guaranty and Trust Company of Scranton, Penna., and hereby accepts and objects to the item of \$10.00 taxed in the cost bill of Crane & Company, for the reason and upon the ground that the said item of \$10.00 should not go to any one claimant, but be distributed among the different claimants.

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II.

It further objects to a similar item taxed in the cost bill of Bates & Clark, for the reason that only one statutory attorney's fee or docket fee should be taxed against this defendant in this action.

III.

It further excepts to a similar item in the cost bill of B. Manke, for the same reason and upon the same ground.

IV.

It also objects to the cost bill of James Johnson, for the same reason, and upon the same ground.

V.

It further excepts to a similar item in the cost bill of the Puget Sound Pattern Works, for the same reason and upon the same ground.

VI.

It further excepts to a similar item in the cost bill of John E. Good Metal Works, for the same reason and upon the same ground.

VII.

It further excepts to a similar item in the cost bill of Charles H. Allmond & Company, for the same reason and upon the same ground.

VIII.

It further excepts to a similar item in the cost bill of J. T. Fulmele, for the same reason and upon the same ground.

IX.

It further excepts to a similar item in the cost bill of Pacific Engineering Company, for the same reason and upon the same ground.

X.

It further excepts to a similar item in the cost bill of J. H. Buxbaum and S. W. Davis, copartners, as Davis & Buxbaum, for the same reason and upon the same ground.

XI.

It further excepts to a similar item in the cost bill of Whiton Hardware Company, a corporation, for the same reason and upon the same ground.

XII.

It further excepts to a similar item in the cost bill of Bowles Company, for the same reason and upon the same ground.

XIII.

It further excepts to a similar item in the cost bill of Eyres Transfer Co., for the same reason and upon the same ground.

It further excepts to a similar item in the cost bill of Sunde & Erland, for the same reason and upon the same ground.

XIV.

188 It further excepts to a similar item in the cost bill of Marine Manufacturing & Supply Company, for the same reason and upon the same ground.

XV.

It further excepts to a similar item in the cost bill of F. J. Flajole and E. F. Barrett, as Standard Boiler Works, for the same reason and upon the same ground.

XVI.

It further excepts to a similar item in the cost bill of Olympic Foundry Company, for the same reason and upon the same ground.

XVII.

It further excepts to a similar item in the cost bill of Dunham, Carrigan & Hayden Company, for the same reason and upon the same ground.

XVIII.

It further excepts to a similar item in the cost bill of Gorham Rubber Company, for the same reason and upon the same ground.

XIX.

It further excepts to a similar item in the cost bill of George B. Adair, for the same reason and upon the same ground.

XX.

It further excepts to a similar item in the cost bill of Meacham & Pinard, for the same reason and upon the same ground.

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XXI.

It further excepts to a similar item in the cost bill of Henry R. Worthington, for the same reason and upon the same ground.

XXII.

It further excepts to a similar item in the cost bill of Westerman Iron Works, for the same reason and upon the same ground.

XXIII.

It further excepts to a similar item in the cost bill of Schwabacher Hardware Company, for the same reason and upon the same ground.

XXIV.

It further excepts to a similar item in the cost bill of Columbia Engineering Works, for the same reason and upon the same ground.

GRAVES, PALMER & MURPHY,
Attorneys for Title Guaranty and Trust Co.
of Scranton, Penna.

[Endorsed:] Exceptions to Cost Bills. Filed in the U. S. Circuit Court, Western Dist. of Washington. Dec. 18, 1906. A. Reeves Ayres, Clerk. By R. M. Hopkins, Dep.

190 In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company of Scranton, Penna. (a Corporation), Defendants; Olympic Foundry Company et al., Intervenor.

Clerk's Certificate of Taxation of Costs.

This matter being submitted to me this 18th day of December, 1906, for the taxation of costs, as per costs bills filed, and objections thereto, upon due consideration of the same, I hereby tax and allow all cost bills as filed, excepting that I allow but one statutory attorney fee of \$10.00 hereby refusing to tax or allow an attorney fee of \$10.00 to each of the intervenors, that being the only item to which objection is made.

191 To the taxation and to the refusal to tax and allow attorney's fees as above set forth, the intervenors and each of them except, and here and now appeal to the Court from the taxation of the costs herein as above set forth.

A. REEVES AYRES, *Clerk*,
By R. M. HOPKINS,
Deputy Clerk.

[Endorsed:] Clerk's Certificate of Costs. Filed December 18, 1906. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy Clerk.

In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), Defendants;
OLYMPIC FOUNDRY Co. et al., Intervenor.

192 *Order on Review of Taxation of Costs.*

This matter being submitted to the Court upon the application of the several intervenors, by their counsel, for a review of the taxation of costs herein as made by the clerk in this cause, upon due consideration, it is ordered,

That the clerk shall tax an attorney fee of \$10.00 for each and every intervenor; that otherwise the taxation of the costs by the clerk are hereby confirmed.

C. H. HANFORD, *Judge*.

To which the defendant excepts, and exceptions allowed.

C. H. HANFORD, *Judge*.

[Endorsed:] Order on Taxing Costs. Filed in the U. S. Circuit Court, Western Dist. of Washington. Dec. 19, 1906. A. Reeves Ayres, Clerk. By R. M. Hopkins, Dep.

193 In the Circuit Court of the United States, Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company of Scranton, Penna. (a Corporation), Defendants; Olympic Foundry Company et al., Intervenor.

Bill of Exceptions and Proceedings at Trial.

This was an action brought by the above-named complainant, Crane Company, and prosecuted by it and a large number of intervenors to recover of the Title Guaranty and Trust Company of Scranton, Penna., under the allegations of the complaint and the complaint of intervention in this cause. No witnesses were sworn and no formal trial had, and the only facts presented are found in a stipulation which was signed and filed by the interested parties touching certain facts, which stipulation was in words and figures as follows:

194 "In the Circuit Court of the United States, Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company of Scranton, Pennsylvania (a Corporation), Defendant; Olympic Foundry Company et al., Intervenor.

Stipulation as to Claims.

It is hereby mutually agreed by and between the claimants herein-after named, by their attorneys of record, and The Title Guaranty and Trust Company of Scranton, Pennsylvania, defendant, by Messrs. Graves, Palmer & Murphy, that upon a hearing of said cause before the Court, if the testimony of witnesses were produced.

and documentary evidence introduced, to sustain the complaint and complaints in intervention, and the denials in the answers thereto, no proof being offered as to the affirmative defenses set out in said answers, demurrers to said affirmative defenses having been interposed and sustained, that the proof would show facts as follows:

That on or about the 17th day of February, 1905, the Puget Sound Engine Works, Inc., a corporation, entered into a contract in writing with the Government of the United States of America, for the construction of the 'Lieut. Harris,' which said contract is set out in the answers of the Title Guaranty and Trust Company to the various complaints in intervention filed herein, and on the 27th day of February, 1905, the Title Guaranty and Trust Company of Scranton, Pennsylvania, made, executed and delivered to the Government of the United States a bond in the sum of ten thousand (\$10,000.00) dollars, which said bond is set out in the answers of the said defendants, Title Guaranty and Trust Company, to the complaint and complaints in intervention herein.

That thereafter the said Puget Sound Engine Works, Inc., entered upon the performance of said contract.

That at and between the 1st day of March, 1905, and the 21st day of September, 1905, the various claimants hereinafter mentioned, furnished material and labor to the Puget Sound Engine Works, Inc., for the construction of the 'Lieut. Harris,' at that time being constructed under contract by and between the Puget Sound Engine Works, Inc., a corporation, and the Government of the United States of America, which materials were used and which labor was performed in the construction of said vessel, at and between said dates, and for which there is owing to the various parties hereinafter named, after deducting all payments made by the Puget Sound Engine Works, together with the dividends, aggregating 9.6% paid through the bankruptcy proceedings of the Puget Sound Engine Works, the sums set opposite their respective names, as follows:

Geo. B. Adair, materials, Aug. 8 to Sept. 7, 1905.....	\$96.08
Columbia Engineering Works, materials, July 24, 1905....	251.06
Marine Mfg. & Supply Co. materials, July 19, 1905.....	386.59
Gorham Rubber Co., materials, June 17, 1905, to Sept. 16, 1905.....	93.83
Henry R. Worthington, materials, June 30, 1905.....	216.96
Westerman Iron Works, materials, April 28, 1905.....	667.17
Bogart, Bates & Co., materials, August 10, 1905.....	564.33
Meacham & Pinard, materials, June to September, 1905.....	473.99
Whiton Hardware Co., materials, June to September, 1905.....	112.30
Sunde & Erland, materials, June 3 to Sept., 1905.....	
Dunham, Carrigan & Hayden Co., materials, May 24, to August 29, 1905.....	80.20
Dunham, Carrigan & Hayden Co., materials furnished by F. H. Schroeder Co., Sept., 1905.....	223.45
Bowles & Co., materials, May 19 to Aug. 31-05.....	159.81

S. B. Hicks & Sons Co., materials, May 1 to Aug., 1905....	181.70
Olympic Foundry Co., materials, Apr. 27 to Sept. 12-05....	744.29
F. J. Flajole and E. F. Barrett, co-partners as Standard Boiler Works, July 10 to Aug. 22-05.....	211.54
Davis & Buxbaum, materials, July 15 to Sept. 13-05.....	245.36
Manke & Grace, materials, July 31, 1905.....	31.64
Jas. Johnston, labor, August, 1905.....	89.55
George Broom, labor, August, 1905.....	40.05
Schwabacher Hardware Co., materials, May 4 to Sept. 2-05.	526.68
Puget Sound Machinery Depot, materials, July 2 to Sept. 21, 1905.....	120.56
A. H. Holstrom, materials, July 2 to Sept. 21, 1905.	325.74
198 Puget Sound Engineering Works, upon its account, and as assignee of Puget Sound Mills & Timber Co., materials, May 2 to Sept. 21, 1905.....	335.81
J. T. Fulmele, doing business as Eagle Iron Foundry, materials, June 30 to Sept. 21, 1905.....	121.67
John E. Good Metal Works, materials, June 1 to July 10, 1905	97.61
Frederick & Nelson, materials, June 17 to Sept. 12-05.....	279.78
Crane & Co., materials, May 1 to Sept. 21, 1905.....	1153.51
Washington Iron Works, materials, June 3 to Sept. 21-05.	51.53
Eagle Brass Co., materials, June 3 to Sept. 21-05.....	400.00
Lewis, Anderson & Foard Co., July 12 to Sept. 14-05.....	261.26
Vulcan Iron Works, June 1st to Sept. 25-05.....	166.14
M. A. Bargar & Co., July 1st to Sept. 21-05.....	358.74
Kinge & Winge, August 25-05.....	43.35

That Chas. H. Allmond and G. E. Ahlberg, doing business as Chas. H. Allmond & Company, furnished certain drawings and patterns between May 10, 1905 and September 20, 1905, for which, after deducting all payments and dividends in bankruptcy 199 there remains unpaid the sum of \$167.87; that said drawings and patterns were used for the making and casting of certain metal parts of the said 'Lieut. Harris,' which said metal parts so cast from said drawing and patterns were used in the actual construction of said boat.

That B. D. Bates and R. O. Fraser, doing business as Puget Sound Pattern Works, furnished certain drawings and patterns between the 1st day of June, 1905, and the 2d day of August, 1905, for which, after deducting all payments and dividends in bankruptcy there remains unpaid the sum of \$82.56, that said drawings and patterns were used for the making and casting of certain metal parts of the said 'Lieut. Harris,' which said metal parts so cast from said drawings and patterns were used in the actual construction of said boat.

That the Chesley Tow Boat Company, between the 1st day of June, 1905, and the 2d day of August, 1905, furnished certain towing and wharfage for materials furnished by the Puget Sound Engine Works, Inc., for the construction of the said 'Lieut. Harris,' that said materials so towed and wharfed by the said Chesley Tow Boat Company, entered into the actual construction of said 'Lieut. Harris,' and the balance due thereon, after deducting all payments, is \$83.17.

200 That Eyres Transfer Company, at and between the 1st day of May, 1905, and the 21st day of September, 1905, were engaged in the business of carting and during said period rendered service to the Puget Sound Engine Works, by carting from the various docks to the plant of the Puget Sound Engine Works, Inc., and other places in the city of Seattle, certain materials for use in the construction of the 'Lieut. Harris,' and paid the advance charges thereon to carriers from whom they received the same, said advance charges so paid amounting to \$55.32; and all of said materials so carted and upon which charges were so paid, were used in the actual construction of said steamer 'Lieut. Harris,' and there remains unpaid to the said Eyres Transfer Company after deducting all payments and dividends in bankruptcy, the sum of \$79.37.

That the 'Lieut. Harris,' was completed September 21, 1905; that no action was brought by the Government of the United States within six months thereafter upon said bond; that this action was brought within one year from and after September 21, 1905.

Dated at Seattle in said district this 13 day of December, 1906.

IRA BRONSON AND
D. B. TREFETHEN,

201 *Att'y- for Puget Sound Machinery Depot.*
GRAVES, PALMER & MURPHY,
Att'ys for Defendant Title Guaranty & Trust Co.
McCLURE & McCLURE,

Att'ys for Marine Mnfg. Co., Sunde & Erland,
Eyres Transfer Co., Bowles & Co.
S. H. STEELE,

Att'y for S. B. Hicks & Sons Co.
H. T. GRANGER,
Att'y for Bogart, Bates & Co., Manke & Grace,

James Johnson, Crane Co.
A. O. ANDERSON, *Att'y for A. H. Holstrom.*
GEO. H. KING, *Att'y for George Broom.*
WARDELL & WARDELL,

Att'y for Whiton Hardware Co.
KERR & McCORD,

Att'y- for Pacific Engineering Co.
WRIGHT & KELLEHER,

Att'y- for Frederick & Nelson.
E. C. ELLIS,

Att'y for Washington Iron Works.
FLUECK & BEBB,

Att'y- for Eagle Brass Foun-ry.
CUTTS & DORETY,

202 *Att'ys for M. Barger & Co.*
ALLEN, ALLEN & STRATTON,

Att'ys for Chesley Tow Boat Co. and
Lewis, Anderson and Foard Co.
BENTON EMBREE, *Att'y for Vulcan Works.*

GRAY & STERN,

Att'ys for all Claimants Herein not Specifically Named.

BENTON EMBREE,
Att'y for King & Winge."

The above stipulation was filed in the clerk's office on December 13, 1906, and thereafter the plaintiff and the intervenors moved to submit the cause and for judgment upon the pleadings and the above stipulation, and the motion came on to be heard on the 17th day of December, 1906, and the cause was then submitted to the Court for its decision, the formality of the rules as to special findings was waived by the parties, and the intervenors presented on the 19th day of December, 1906, findings, conclusions and decree and, after duly considering the findings, conclusions and judgment thus presented and they being such in the opinion of the Court as should be entered, the Court signed the findings and conclusions and judgment and directed them to be entered in this cause, and nothing occurring at the hearing of said cause and no facts admitted or confessed

203 which in any way modified or changed the facts as set out in said stipulation, and now the defendant, Title Guaranty and Trust Company of Scranton, Penna., presents the foregoing as its bill of exceptions in this cause and prays that the same may be settled, allowed, signed and certified by the Judge as provided by law and the rules of the above-entitled court.

GRAVES, PALMER & MURPHY,
Attorneys for Title Guaranty and Trust
Company of Scranton, Penna.

UNITED STATES OF AMERICA,
Western District of Washington,
Northern Division, ss:

Foregoing bill of exceptions was presented to the undersigned Judge of the Above-entitled court, who was present and presiding throughout the trial and all the proceedings referred to in the foregoing bill of exceptions and this bill of exceptions being within the time fixed by the rules and order of this court duly filed and no exception having been filed thereto within the time allowed and certified to be true and to be the bill of exceptions in the above-entitled cause.

Dated this 14th day of January, 1906.

C. H. HANFORD, Judge.

204 We hereby admit due and timely service of the foregoing bill of exceptions.

Dated this 26th day of December, 1906.

IRA BRONSON AND
D. B. TREFETHEN,

Att'ys for Puget Sound Machinery Depot.

GRAVES, PALMER & MURPHY,

Att'ys for Defendant Title Guaranty & Trust Co.

McCLURE & McCLURE.

Att'ys for Marine Mfg. Co., Sunde & Erland,

Eyres Transfer Co., Bowles & Co.

S. H. STEELE.

Att'y for S. B. Hicks & Sons Co.

H. T. GRANGER,

*Att'y for Bogart, Bates & Co., and Bates & Clarke,
Manke & Grace, and B. Manke, James Johnson,
Crane Co.*

A. A. ANDERSON, *Att'y for A. H. Holstrom.*

GEO H. KING,

By M. H. VAN NUYS, *Att'y for George Broom.*
WARDALL & WARDALL,

Att'ys Whiton Hardware Co.

KERR & McCORD,

Att'ys Pacific Engineering Co.

WRIGHT & KELLEHER,

Att'ys Frederick & Nelson.

EVERETT C. ELLIS,

Att'y Wash. Iron Works.

FLUECK & BEBB,

Attorneys Eagle Brass Foundry.

CUTTS & DORETY,

Att'ys for M. Barger & Co.

ALLEN, ALLEN & STRATTON,

Att'ys Chesley Tow Boat Co. and Lewis,

Anderson & Foard Co.

BENTON EMBREE,

Att'y for Vulcan Iron Works.

GRAY & STERN,

Att'y's for all Claimants Herein not Specifically Named.

BENTON EMBREE,

Att'y for King & Winge.

[Endorsed:] Bill of Exceptions of Proceedings at Trial. Settled and Filed in the U. S. Circuit Court, Western Dist. of Washington. Jan. 14, 1907. A. Reeves Ayres, Clerk. W. D. Covington, Dep.

206 In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company of Scranton, Penna. (a Corporation), Defendants; Olympic Foundry Company et al., Intervenor.

Notice of Motion for Order Fixing Amount of Bond, etc.

To the Above-entitled Plaintiff and to the Above-entitled Intervenor:

You and each of you will take notice: That the defendant Title Guaranty and Trust Company of Scranton, Penna., will, on Wednes-

day, the 30th day of January, 1907, at the opening of court at 10 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, apply to said court for an order fixing the amount of an appeal and supersedeas bond on appeal of the above-entitled action, and will then and there petition the Court for an order allowing an appeal in said cause.

Dated this 28th day of January, 1907.

GRAVES, PALMER & MURPHY,
*Attorneys for Defendant Title Guaranty and
Trust Company of Scranton, Penna.*

We hereby accept due and timely service of the foregoing notice this 28th day of January, 1907.

IRA BRONSON AND
D. B. TREFETHEN,
Attorneys Puget Sound Machinery Depot.
McCLURE & McCLURE,
Att'ys Marine Mnf'g. Co. et al.

S. H. STEELE,
Att'y for S. B. Hicks & Sons Co.

H. T. GRANGER,
Att'y for Bogart, Bates & Co. et al.
A. A. ANDERSON, *Att'y A. H. Holstrom.*
GEO. H. KING, *Att'y Geo. Broom.*

WARDALL & WARDALL,
Att'ys Whiton Hardware Co.

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KERR & McCORD,
Att'ys Pacific Engineering Co.

WRIGHT & KELLEHER,
Att'ys Frederick & Nelson.

EVERETT C. ELLIS,
Att'y Washington Iron Works.

FLUECK & BEBB,
Att'ys Eagle Brass Foundry.

CUTTS & DORETY,
Att'ys R. A. Barger & Co.

ALLEN, ALLEN & STRATTON,
Att'ys Chesley Tow Boat Co. et al.

BENTON EMBREE,
Att'y Vulcan Iron Works.

GRAY & STERN, ———.
BENTON EMBREE,
Att'y for King & Winge.

[Endorsed:] Notice. Filed in the U. S. Circuit Court, Western
Dist. of Washington. Feb. 15, 1907. A. Reeves Ayres, Clerk.
W. D. Covington, Dep.

209 In the Circuit Court of the United States, Western District of Washington, Northern Division.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY, Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company of Scranton, Penna. (a Corporation), Defendants; Olympic Foundry Company et al., Intervenor.

Petition for Appeal and Order Allowing Appeal.

Now comes the above-entitled defendant, the Title Guaranty and Trust Company of Scranton, Penna., conceiving itself aggrieved by the final order and judgment made and entered in this cause on the 19th day of December, 1906, whereby, among other things it was ordered, adjudged and decreed that the above-entitled plaintiff and the several intervenors each have and recover of this defendant certain sums aggregating the sum of nine thousand six hundred thirty-seven and 14/100 (\$9,637.14) dollars, and awarding costs to the said plaintiff and each of said intervenors, does hereby appeal from

210 said final order and judgment and from the whole and every part thereof, and from the various and several orders entered each in said cause prior to said final judgment, materially affecting the rights of this defendant, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors, which is filed herewith, and prays that this, its petition for said appeal, may be allowed, and that a transcript of the record, proceedings and papers upon which said final order and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and your petitioner further prays that an order be made fixing the amount of security to be given and furnished for said appeal.

GRAVES, PALMER & MURPHY,
*Attorneys for Defendant Title Guaranty &
Surety Co. of Scranton, Penna.*

The foregoing petition for appeal is granted and the appeal allowed upon the giving of a bond or undertaking as required by law in the sum of fifteen thousand (\$15,000.00) dollars.

Dated this 15th day of February, 1907.

C. H. HANFORD,
District Judge, Residing in Said Circuit.

We hereby accept due and timely service of the foregoing petition for appeal this 29th day of January, 1907.

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IRA BRONSON AND
D. B. TREFETHEN,

Att'ys Puget Sound Machinery Depot.
McCLURE & McCLURE,

Att'ys Marine Mnf'g. Supply Co. et al.
S. H. STEELE,

Att'y S. B. Hicks & Sons Co.

H. T. GRANGER,

Att'y Bogart, Bates & Co. et al.

A. A. ANDERSON,

Att'y A. H. Holstrom.

GEO. H. KING,

Att'y Geo. Broom.

WARDALL & WARDALL,

Att'ys Whitton Hardware Co.

KERR & McCORD,

Att'y- Pacific Engineering Co.

WRIGHT & KELLEHER,

Att'ys Frederick & Nelson.

EVERETT C. ELLIS,

Att'y Washington Iron Works.

FLUECK & BEBB,

Att'ys Eagle Brass Foundry.

J. H. ALLEN,

Att'y Chesley Tow Boat Co. et al.

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CUTTS & DORETY,

Att'ys M. A. Barger & Co.

BENTON EMBREE,

Att'y Vulcan Iron Works and King & Winge.

GRAY & STERN,

For all Other Parties.

[Endorsed:] Petition for Appeal. Filed in the U. S. Circuit Court, Western Dist. of Washington. Feb. 15, 1907. A. Reeves Ayres, Clerk. W. D. Covington, Dep.

In the Circuit Court of the United States, Western District of Washington, Northern Division.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty & Trust Company of Scranton, Penna. (a Corporation), Defendants; Olympic Foundry Company et al., Intervenors.

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Order Fixing Amount of Bond, etc.

Upon the application of the above-entitled defendant, the Title Guaranty and Trust Company, duly and regularly made and called

on for hearing for the Court to fix the amount of a cost and supersedeas bond on appeal in the above-entitled cause and good cause appearing therefor.

It is hereby ordered that the amount of such bond be and the same is hereby fixed at the sum of \$15,000, which bond when accepted conditioned as provided by the rules of the Circuit Court of Appeals, shall be a cost and supersedeas bond on appeal in said action.

Done in open court this 15th day of February, 1907.

C. H. HANFORD, *Judge.*

[Endorsed:] Order Fixing Bond. Filed in the U. S. Circuit Court, Western Dist. of Washington. Feb. 15, 1907. A. Reeves Ayres, Clerk. W. D. Covington, Dep.

214 In the Circuit Court of the United States, Western District of Washington, Northern Division.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY, Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company of Scranton, Penna. (a Corporation), Defendants; Olympic Foundry Company, Intervenor.

Bond on Appeal.

Know all Men by These Presents: That the Title Guaranty and Trust Company of Scranton, Penna., as principal, and the Metropolitan Surety Company, as surety, acknowledge themselves to be jointly and severally held and firmly bound unto the above-entitled plaintiff and to each of the intervenors in the above-entitled cause in the full and just sum of fifteen thousand (\$15,000.00), dollars, lawful money of the United States, for which payment well and truly to be

215 made we jointly and severally bind our and each of our heirs and successors by these presents.

In testimony whereof, the said principal and the said surety have each caused their corporate names to be hereunto attached and their corporate seal affixed this 15th day of February, 1907.

The condition of the foregoing obligation is such that whereas, in the above-entitled court and action a final judgment and order was rendered in favor of the plaintiff and each of the intervenors in the above-entitled action, and against this defendant on the 19th day of December, 1905;

And, whereas, the above-named defendants have taken an appeal from said final order and decree to the United States Circuit Court of Appeals for the Ninth Circuit;

Now, therefore, if the said principal and appellant shall prosecute its said appeal to effect and answer all damages and costs if it fails to make good its plea, then the above obligation shall be void; otherwise to remain in full force and virtue, and the said surety hereby expressly consents and agrees that in case of any breach in the conditions of this obligation the said Circuit Court may, upon notice to of not less than ten (10) days, proceed summarily in the suit in which

said bond is given to ascertain the amount which we are bound to
pay on account of such breach and render judgment therefor
216 against it and award an execution therefor.

TITLE GUARANTY AND TRUST COM-
PANY OF SCRANTON, PENNA.,
By CLARENCE S. PARKER,

General Agent.

THE METROPOLITAN SURETY COM-
PANY,

By CHARLES T. HUGHES,

Agent and Attorney in Fact.

Attest:

H. R. CLISE,

Resident Assistant Secretary and Attorney in Fact.

The foregoing bond is hereby approved this 15th day of February,
1907.

C. H. HANFORD, *Judge.*

We hereby accept due and timely service of the foregoing bond
this 29th day of January, 1907.

IRA BRONSON AND

D. B. TREFETHEN,

Att'ys Puget Sound Machinery Depot.

McCLURE & McCLURE,

Att'ys Marine Mnfg. Supply Co. et al.

S. H. STEELE,

Att'y S. B. Hicks & Sons Co.

H. T. GRANGER,

Att'y Bogart, Bates & Co. et al.

A. A. ANDERSON,

Att'y A. H. Holstrom.

GEO. H. KING,

Att'y Geo. Broom.

WARDALL & WARDALL,

Att'ys Whitton Hardware Co.

WRIGHT & KELLEHER,

Att'ys Frederick & Nelson.

EVERETT C. ELLIS,

Att'y Washington Iron Works.

FLUECK & BEBB,

Att'ys Eagle Brass Foundry.

J. H. ALLEN,

Att'y Chesley Tow Boat Co. et al.

CUTTS & DORETY,

Att'ys M. A. Barger & Co.

BENTON EMBREE,

Att'y Vulcan Iron Works.

KERR & McCORD,

Att'y- Pacific Engineering Co.

Att'y King & Winge.

GRAY & STERN,

[Endorsed:] Bond on Appeal. Filed in the U. S. Circuit Court, Western Dist. of Washington, Feb. 15, 1907. A. Reeves Ayres, Clerk. W. D. Covington, Dep.

218 In the Circuit Court of the United States, Western District of Washington, Northern Division.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY, Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company of Scranton, Penna., Defendants; Olympic Foundry Company et al., Interveners.

Assignment of Errors on Appeal.

Comes now the above-entitled defendant, the Title Guaranty and Trust Company of Scranton, Penna., by its attorneys, the undersigned, and in connection with its petition on appeal filed herein from the final order and decree of this Court entered herein on the 19th day of December, 1906, and all orders entered in said cause affecting the substantial rights of this defendant, says, that the final order and decree, together with the conclusions of law and said order entered previous thereto in this cause affecting the substantial rights of this defendant are erroneous in the following particulars, to wit:

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1.

The Court erred in entering an order overruling the demurrer of said defendant to complaint of plaintiff and the separate complaints of intervention of Puget Sound Machinery Depot, Marine Mnfg. Supply Company, Sunde & Erland Company, Eyres Transfer Company, Bowles Company, S. B. Hicks & Sons, Co., Bates & Clark, B. Mancke, James Johnson, A. H. Holstrom Iron Works, George Broom, Whiton Hardware Company, Frederick & Nelson, Washington Iron Works, Eagle Brass Foundry, M. A. Barger & Company, Chesley Tow Boat Co., Lewis, Anderson & Foard Co., Vulcan Iron Works, King & Winge, George B. Adair, Columbia Engineering Works, Gorham Rubber Co., Henry R. Worthington, Westerman Iron Works, Meacham & Pinard, Dunham, Carrigan & Hayden Co., Olympic Foundry Co., Standard Boiler Works, Schwabacher Hardware Co., J. T. Fulmele, Jno. N. Good Metal Works, Chas. H. Allmond & Company, Puget Sound Pattern Works, Pacific Engineering Company, Davis & Buxbaum and Eagle Iron Foundry.

2.

The said Court erred in overruling the demurrer of said defendant to the complaint of the above-entitled plaintiff, Crane Company.

220

3.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Puget Sound Machinery Depot.

4.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Marine Mnf. Supply Company.

5.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Eyres Transfer Company.

6.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Bowles Company.

7.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of S. B. Hicks & Sons Co.

8.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Bates & Clark Co.

9.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of B. Mancke.

221

10.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of James Johnson.

11.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of A. H. Holstrom Iron Works.

12.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of George Broom.

13.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Whiton Hardware Company.

14.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Frederick & Nelson.

15.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Washington Iron Works.

16.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Eagle Brass Foundry.

222

17.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of M. A. Barger & Company.

18.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Chesley Tow Boat Co.

19.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Lewis, Anderson & Foard Co.

20.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Vulcan Iron Works.

21.

The Court erred in overruling the demurrer of said defendant to the complainant in intervention of King & Winge.

22.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of George B. Adair.

23.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Columbia Engineering Works.

223

24.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Gorham Rubber Co.

25.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Henry R. Worthington.

26.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Westerman Iron Works.

27.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Meacham & Pinard.

28.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Dunham, Carrigan & Hayden Co.

29.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Olympic Foundry Co.

30.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Standard Boiler Works.

224

31.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Schwabacher Hardware Co.

32.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of J. T. Fulmele.

33.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Jno. N. Good Metal Works.

34.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Chas. H. Allmond & Company.

35.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Puget Sound Pattern Works.

36.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Pacific Engineering Co.

37.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Davis & Buxbaum.

225

38.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Eagle Iron Foundry.

39.

The Court erred in sustaining the demurrer of the above-entitled plaintiff to the first affirmative defense set out in its answer.

40.

The Court erred in sustaining the plaintiff's demurrer to the second affirmative defense set out in said answer.

41.

The Court erred in sustaining a demurrer of plaintiff to the third further affirmative defense set out in said answer.

42.

The Court erred in sustaining a demurrer of plaintiff to the fourth affirmative defense set out in said answer.

43.

The Court erred in sustaining the demurrer of the intervenor, Puget Sound Machinery Depot, to the first affirmative defense set out in said answer.

44.

The Court erred in sustaining the demurrer of the intervenor, Puget Sound Machinery Depot, to the second affirmative defense set out in said answer.

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45.

The Court erred in sustaining the demurrer of the intervenor, Puget Sound Machinery Depot, to the third affirmative defense set out in said answer.

46.

The Court erred in sustaining the demurrer of the intervenor, Puget Sound Machinery Depot, to the fourth affirmative defense set out in said answer.

47.

The Court erred in sustaining the demurrer of the intervenor, Marine Mnf. Supply Co., to the first affirmative defense set out in said answer.

48.

The Court erred in sustaining the demurrer of the intervenor, Marine Mnf. Supply Co., to the second affirmative defense set out in said answer.

49.

The Court erred in sustaining the demurrer of the intervenor, Marine Mnf. Supply Co., to the third affirmative defense set out in said answer.

50.

The Court erred in sustaining the demurrer of the intervenor Marine Mnf. Supply Company to the fourth affirmative defense set out in the answer.

51.

227 The Court erred in sustaining the demurrer of the intervenor, Sunde & Erland to the first affirmative defense set out in said answer.

52.

The Court erred in sustaining the demurrer of the intervenor Sunde & Erland to the second affirmative defense set out in the answer.

53.

The Court erred in sustaining the demurrer of the intervenor Sunde & Erland to the third affirmative defense set out in said answer.

54.

The Court erred in sustaining the demurrer of the intervenor Sunde & Erland to the fourth affirmative defense set out in said answer.

55.

The Court erred in sustaining the demurrer of the intervenor Eyres Transfer Company to the first affirmative defense set out in said answer.

56.

The Court erred in sustaining the demurrer of the intervenor Eyres Transfer Company to the second affirmative defense set out in said answer.

57.

The Court erred in sustaining the demurrer of the intervenor Eyres Transfer Company to the third affirmative defense set out in said answer.

228

58.

The Court erred in sustaining the demurrer of the intervenor Eyres Transfer Company to the fourth affirmative defense set out in said answer.

59.

The Court erred in sustaining the demurrer of the intervenor Bowles Company to the first affirmative defense set out in said answer.

59½.

The Court erred in sustaining the demurrer of the intervenor Bowles Company to the second affirmative defense set out in said answer.

60.

The Court erred in sustaining the demurrer of the intervenor Bowles Company to the third affirmative defense set out in said answer.

61.

The Court erred in sustaining the demurrer of the intervenor Bowles Company to the fourth affirmative defense set out in said answer.

62.

The Court erred in sustaining the demurrer of the intervenor S. B. Hicks & Sons Co., to the first affirmative defense set out in said answer.

63.

229 The Court erred in sustaining the demurrer of the intervenor S. B. Hicks & Sons Co. to the second affirmative defense set out in said answer.

64.

The Court erred in sustaining the demurrer of the intervenor S. B. Hicks & Sons Co. to the third affirmative defense set out in said answer.

65.

The Court erred in sustaining the demurrer of the intervenor S. B. Hicks & Sons Co., to the fourth affirmative defense set out in said answer.

66.

The Court erred in sustaining the demurrer of the intervenor Bates & Clark to the first affirmative defense set out in said answer.

67.

The Court erred in sustaining the demurrer of the intervenor Bates & Clark to the second affirmative defense set out in said answer.

68.

The Court erred in sustaining the demurrer of the intervenor Bates & Clark to the third affirmative defense set out in said answer.

69.

The Court erred in sustaining the demurrer of the intervenor Bates & Clark to the fourth affirmative defense set out in said answer.

230

70.

The Court erred in sustaining the demurrer of the intervenor B. Manke and James Johnson to the first affirmative defense set out in said answer.

71.

The Court erred in sustaining the demurrer of the intervenor B. Manke and James Johnson to the second affirmative defense set out in said answer.

72.

The Court erred in sustaining the demurrer of the intervenor B. Manke and James Johnson to the third affirmative defense set out in said answer.

73.

The Court erred in sustaining the demurrer of the intervenor B. Manke and James Johnson to the fourth affirmative defense set out in said answer.

74.

The Court erred in sustaining the demurrer of the intervenor A. H. Holstrom to the first affirmative defense set out in said answer.

75.

The Court erred in sustaining the demurrer of the intervenor A. H. Holstrom to the second affirmative defense set out in said answer.

76.

231 The Court erred in sustaining the demurrer of the intervenor A. H. Holstrom to the third affirmative defense set out in said answer.

77.

The Court erred in sustaining the demurrer of the intervenor A. H. Holstrom to the fourth affirmative defense set out in said answer.

78.

The Court erred in sustaining the demurrer of the intervenor George Broom to the first affirmative defense set out in said answer.

79.

The Court erred in sustaining the demurrer of the intervenor George Broom to the second affirmative defense set out in said answer.

80.

The Court erred in sustaining the demurrer of the intervenor George Broom, to the third affirmative defense set out in said answer.

81.

The Court erred in sustaining the demurrer of the intervenor George Broom to the fourth affirmative defense set out in said answer.

82.

The Court erred in sustaining the demurrer of the intervenor Whiton Hardware Co. to the first affirmative defense set out in said answer.

232

83.

The Court erred in sustaining the demurrer of the intervenor Whiton Hardware Co. to the second affirmative defense set out in said answer.

85.

The Court erred in sustaining the demurrer of the intervenor Whiton Hardware Co. to the third affirmative defense set out in said answer.

86.

The Court erred in sustaining the demurrer of the intervenor Whiton Hardware Co. to the fourth affirmative defense set out in said answer.

87.

The Court erred in sustaining the demurrer of the intervenor Pacific Engineering Co. to the first affirmative defense set out in said answer.

88.

The Court erred in sustaining the demurrer of the intervenor Pacific Engineering Co. to the second affirmative defense set out in said answer.

89.

The Court erred in sustaining the demurrer of the intervenor Pacific Engineering Co. to the third affirmative defense set out in said answer.

90.

233 The Court erred in sustaining the demurrer of the intervenor Pacific Engineering Co. to the fourth affirmative defense set out in said answer.

91.

The Court erred in sustaining the demurrer of the intervenor Frederick & Nelson to the first affirmative defense set out in said answer.

92.

The Court erred in sustaining the demurrer of the intervenor

93.

Frederick & Nelson to the second affirmative defense set out in said answer.

94.

The Court erred in sustaining the demurrer of the intervenor Frederick & Nelson to the third affirmative defense set out in said answer.

95.

The Court erred in sustaining the demurrer of the intervenor Frederick & Nelson to the fourth affirmative defense set out in said answer.

96.

The Court erred in sustaining the demurrer of the intervenor Washington Iron Works to the first affirmative defense set out in said answer.

97.

The Court erred in sustaining the demurrer of the intervenor Washington Iron Works to the second affirmative defense set out in said answer.

234

98.

The Court erred in sustaining the demurrer of the intervenor Washington Iron Works to the third affirmative defense set out in said answer.

99.

The Court erred in sustaining the demurrer of the intervenor Washington Iron Works to the fourth affirmative defense set out in said answer.

100.

The Court erred in sustaining the demurrer of the intervenor Eagle Brass Foundry to the first affirmative defense set out in said answer.

101.

The Court erred in sustaining the demurrer of the intervenor Eagle Brass Foundry to the second affirmative defense set out in said answer.

102.

The Court erred in sustaining the demurrer of the intervenor Eagle Brass Foundry to the third affirmative defense set out in said answer.

103.

The Court erred in sustaining the demurrer of the intervenor Eagle Brass Foundry to the fourth affirmative defense set out in said answer.

104.

235 The Court erred in sustaining the demurrer of the intervenor M. A. Barger & Company to the first affirmative defense set out in said answer.

105.

The Court erred in sustaining the demurrer of the intervenor M. A. Barger & Company to the second affirmative defense set out in said answer.

106.

The Court erred in sustaining the demurrer of the intervenor M. A. Barger & Company to the third affirmative defense set out in said answer.

106.

The Court erred in sustaining the demurrer of the intervenor M. A. Barger & Company to the fourth affirmative defense set out in said answer.

108.

The Court erred in sustaining the demurrer of the intervenor Chesley Tow Boat Company to the first affirmative defense set out in said answer.

108.

The Court erred in sustaining the demurrer of the intervenor Chesley Tow Boat Co. to the second affirmative defense set out in said answer.

109.

The Court erred in sustaining the demurrer of the intervenor Chesley Tow Boat Company to the third affirmative defense set out in said answer.

236

110.

The Court erred in sustaining the demurrer of the intervenor Chesley Tow Boat Co. to the fourth affirmative defense set out in said answer.

111.

The Court erred in sustaining the demurrer of the intervenor Lewis, Anderson & Foard Co., to the first affirmative defense set out in said answer.

112.

The Court erred in sustaining the demurrer of the intervenor Lewis, Anderson & Foard Co. to the second affirmative defense set out in said answer.

113.

The Court erred in sustaining the demurrer of the intervenor Lewis, Anderson & Foard Co. to the third affirmative defense set out in said answer.

114.

The Court erred in sustaining the demurrer of the intervenor Lewis, Anderson & Foard Co. to the fourth affirmative defense set out in said answer.

115.

The Court erred in sustaining the demurrer of the intervenor Vulcan Iron Works to the first affirmative defense set out in said answer.

116.

237 The Court erred in sustaining the demurrer of the intervenor Vulcan Iron Works to the second affirmative defense set out in said answer.

117.

The Court erred in sustaining the demurrer of the intervenor Vulcan Iron Works to the third affirmative defense set out in said answer.

118.

The Court erred in sustaining the demurrer of the intervenor Vulcan Iron Works to the fourth affirmative defense set out in said answer.

119.

The Court erred in sustaining the demurrer of the intervenor King & Winge to the first affirmative defense set out in said answer.

120.

The Court erred in sustaining the demurrer of the intervenor King & Winge to the second affirmative defense set out in said answer.

121.

The Court erred in sustaining the demurrer of the intervenor King & Winge to the third affirmative defense set out in said answer.

122.

The Court erred in sustaining the demurrer of the intervenor King & Winge to the fourth affirmative defense set out in said answer.

238

123.

The Court erred in sustaining the demurrer of the intervenor George B. Adair to the first affirmative defense set out in said answer.

124.

The Court erred in sustaining the demurrer of the intervenor George B. Adair to the second affirmative defense set out in said answer.

125.

The Court erred in sustaining the demurrer of the intervenor George B. Adair to the third affirmative defense set out in said answer.

126.

The Court erred in sustaining the demurrer of the intervenor George B. Adair to the fourth affirmative defense set out in said answer.

127.

The Court erred in sustaining the demurrer of the intervenor Columbia Engineering Works to the first affirmative defense set out in said answer.

128.

The Court erred in sustaining the demurrer of the intervenor Columbia Engineering Works to the second affirmative defense set out in said answer.

129.

239 The Court erred in sustaining the demurrer of the intervenor Columbia Engineering Works to the third affirmative defense set out in said answer.

130.

The Court erred in sustaining the demurrer of the intervenor Columbia Engineering Works to the fourth affirmative defense set out in said answer.

131.

The Court erred in sustaining the demurrer of the intervenor Gorham Rubber Co. to the first affirmative defense set out in said answer.

132.

The Court erred in sustaining the demurrer of the intervenor Gorham Rubber Co. to the second affirmative defense set out in said answer.

133.

The Court erred in sustaining the demurrer of the intervenor Gorham Rubber Co. to the third affirmative defense set out in said answer.

134.

The Court erred in sustaining the demurrer of the intervenor Gorham Rubber Co. to the fourth affirmative defense set out in said answer.

135.

The Court erred in sustaining the demurrer of the intervenor Henry R. Worthington to the first affirmative defense set out in said answer.

240

136.

The Court erred in sustaining the demurrer of the intervenor Henry R. Worthington to the second affirmative defense set out in said answer.

137.

The Court erred in sustaining the demurrer of the intervenor Henry R. Worthington to the third affirmative defense set out in said answer.

138.

The Court erred in sustaining the demurrer of the intervenor Henry R. Worthington to the fourth affirmative defense set out in said answer.

139.

The Court erred in sustaining the demurrer of the intervenor Westerman Iron Works to the first affirmative defense set out in said answer.

140.

The Court erred in sustaining the demurrer of the intervenor Westerman Iron Works to the second affirmative defense set out in said answer.

141.

The Court erred in sustaining the demurrer of the intervenor Westerman Iron Works to the third affirmative defense set out in said answer.

142.

241 The Court erred in sustaining the demurrer of the intervenor Westerman Iron Works to the fourth affirmative defense set out in said answer.

143.

The Court erred in sustaining the demurrer of the intervenor Meacham & Pinard to the first affirmative defense set out in said answer.

144.

The Court erred in sustaining the demurrer of the intervenor Meacham & Pinard to the second affirmative defense set out in said answer.

145.

The Court erred in sustaining the demurrer of the intervenor Meacham & Pinard to the third affirmative defense set out in said answer.

146.

The Court erred in sustaining the demurrer of the intervenor Meacham & Pinard to the fourth affirmative defense set out in said answer.

147.

The Court erred in sustaining the demurrer of the intervenor Dunham, Carrigan & Hayden Co. to the affirmative defense set out in said answer.

148.

The Court erred in sustaining the demurrer of the intervenor Dunham, Carrigan & Hayden Co. to the second affirmative defense set out in said answer.

242

149.

The Court erred in sustaining the demurrer of the intervenor Dunham, Carrigan & Hayden Co. to the third affirmative defense set out in said answer.

150.

The Court erred in sustaining the demurrer of the intervenor Dunham, Carrigan & Hayden Co. to the fourth affirmative defense set out in said answer.

151.

The Court erred in sustaining the demurrer of the intervenor Olympic Foundry Co. to the first affirmative defense set out in said answer.

152.

The Court erred in sustaining the demurrer of the intervenor Olympic Foundry Co. to the second affirmative defense set out in said answer.

153.

The Court erred in sustaining the demurrer of the intervenor Olympic Foundry Co. to the third affirmative defense set out in said answer.

154.

The Court erred in sustaining the demurrer of the intervenor Olympic Foundry Co. to the fourth affirmative defense set out in said answer.

155.

243 The Court erred in sustaining the demurrer of the intervenor Standard Boiler Works to the first affirmative defense set out in said answer.

156.

The Court erred in sustaining the demurrer of the intervenor Standard Boiler Works to the second affirmative defense set out in said answer.

157.

The Court erred in sustaining the demurrer of the intervenor Standard Boiler Works to the third affirmative defense set out in said answer.

158.

The Court erred in sustaining the demurrer of the intervenor Standard Boiler Works to the fourth affirmative defense set out in said answer.

159.

The Court erred in sustaining the demurrer of the intervenor Schwabacher Hardware Company to the first affirmative defense set out in said answer.

160.

The Court erred in sustaining the demurrer of the intervenor Schwabacher Hardware Co. to the second affirmative defense set out in said answer.

161.

The Court erred in sustaining the demurrer of the intervenor Schwabacher Hardware Co. to the third affirmative defense set out in said answer.

244

162.

The Court erred in sustaining the demurrer of the intervenor Schwabacher Hardware Company to the fourth affirmative defense set out in said answer.

163.

The Court erred in sustaining the demurrer of the intervenor J. T. Fulmole to the first affirmative defense set out in said answer.

164.

The Court erred in sustaining the demurrer of the intervenor T. J. Fulmele to the second affirmative defense set out in said answer.

165.

The Court erred in sustaining the demurrer of the intervenor J. T. Fulmele to the third affirmative defense set out in said answer.

165.

The Court erred in sustaining the demurrer of the intervenor J. T. Fulmele to the fourth affirmative defense set out in said answer.

166.

The Court erred in sustaining the demurrer of the intervenor Jno. E. Good Metal Works to the first affirmative defense set out in said answer.

167.

245 The Court erred in sustaining the demurrer of the intervenor Jno. E. Good Metal Works to the second affirmative defense set out in said answer.

168.

The Court erred in sustaining the demurrer of the intervenor Jno. E. Good Metal Works to the third affirmative defense set out in said answer.

169.

The Court erred in sustaining the demurrer of the intervenor Jno. E. Good Metal Works to the fourth affirmative defense set out in said answer.

170.

The Court erred in sustaining the demurrer of the intervenor Chas. H. Allmond & Company to the first affirmative defense set out in said answer.

171.

The Court erred in sustaining the demurrer of the intervenor Chas. H. Allmond & Company to the second affirmative defense set out in said answer.

172.

The Court erred in sustaining the demurrer of the intervenor Chas. A. Allmond & Company to the third affirmative defense set out in said answer.

173.

The Court erred in sustaining the demurrer of the intervenor Chas. H. Allmond & Company to the fourth affirmative defense set out in said answer.

246

174.

The Court erred in sustaining the demurrer of the intervenor Puget Sound Pattern Works to the first affirmative defense set out in said answer.

175.

The Court erred in sustaining the demurrer of the intervenor Puget Sound Pattern Works to the second affirmative defense set out in said answer.

176.

The Court erred in sustaining the demurrer of the intervenor Puget Sound Pattern Works to the third affirmative defense set out in said answer.

177.

The Court erred in sustaining the demurrer of the intervenor Puget Sound Pattern Works to the fourth affirmative defense set out in said answer.

178.

The Court erred in sustaining the demurrer of the intervenor Davis & Buxbaum to the first affirmative defense set out in said answer.

179.

The Court erred in sustaining the demurrer of the intervenor Davis & Buxbaum to the second affirmative defense set out in said answer.

180.

247 The Court erred in sustaining the demurrer of the intervenor Davis & Buxbaum to the third affirmative defense set out in said answer.

181.

The Court erred in sustaining the demurrer of the intervenor Davis & Buxbaum to the fourth affirmative defense set out in said answer.

182.

The Court erred in sustaining the demurrer of the intervenor Eagle Iron Foundry to the first affirmative defense set out in said answer.

183.

The Court erred in sustaining the demurrer of the intervenor Eagle Iron Foundry to the second affirmative defense set out in said answer.

184.

The Court erred in sustaining the demurrer of the intervenor Eagle Brass Foundry to the third affirmative defense set out in said answer.

185.

The Court erred in sustaining the demurrer of the intervenor Eagle Brass Foundry to the fourth affirmative defense set out in said answer.

186.

The Court erred in entering an order sustaining the demurrers of the plaintiff and the intervenors Puget Sound Machinery
248 Depot, Marine Mnfg. Supply Company, Sunde & Erland Company, Eyres Transfer Company, Bowles Company, S. B. Hicks & Sons Co., Bates & Clark, B. Mancke, James Johnson, A. H. Holstrom Iron Works, George Broom, Whiton Hardware Co., Frederick & Nelson, Washington Iron Works, Eagle Brass Foundry, M. A. Barger Company, Chesley Tow Boat Co., Lewis, Anderson & Foard Co., Vulcan Iron Works, King & Winge, George B. Adair, Columbia Engineering Works, Gorham Rubber Co., Henry R. Worthington, Westerman Iron Works, Meacham & Pinard, Dunham, Carrigan & Hayden Co., Olympic Foundry Co., Standard Boiler Works, Schwabacher Hardware Co., J. T. Fulmele, Jno. N. Good Metal Works, Chas. H. Allmond & Company, Puget Sound Pattern Works, Pacific Engineering Co., Davis & Buxbaum and Eagle Iron Foundry.

187.

The Court erred in making its 5th finding of fact.

188.

The Court erred in finding in the 6th subdivision of said finding that Charles H. Allmond & Co. furnished material and did work upon said vessel.

189.

The Court erred in finding that the Chesley Tow Boat Company did work or furnished material upon the said vessel.

249

190.

The Court erred in finding that the Eyres Transfer Co. did work or furnished material in the construction of the vessel named in said findings of fact.

191.

The Court erred in making its first conclusion of law.

192.

The Court erred in making its second conclusion of law.

193.

The Court erred in making its third conclusion of law.

194.

The Court erred in making its fourth conclusion of law.

195.

The Court erred in entering judgment in favor of said plaintiff and against said defendant for any sum whatsoever.

196.

The Court erred in rendering a judgment in favor of each of said intervenors.

197.

The Court erred in rendering judgment as shown by subdivisions 1 to 39 of said judgment, and erred in entering judgment as set out in each of said subdivisions.

250

198.

The Court erred in overruling the exceptions of this defendant to

199.

the cost bill of the above-entitled plaintiff as to the item for not allowing the said plaintiff \$10.00 as statutory attorneys' fees.

200.

The Court erred in overruling the exceptions of this defendant to the cost bill of each of said intervenors and erred in allowing each of the said intervenors a statutory attorney's fee of \$10.00, and erred in allowing more than one statutory attorney's fee of \$10.00 against this defendant.

GRAVES, PALMER & MURPHY,
*Attorneys for Defendant Title Guaranty and
Trust Company of Scranton, Penna.*

We hereby accept due and timely service of the foregoing assignment- of error this 29th day of January, 1907.

IRA BRONSON AND

D. B. TREFETHEN,

Att'y- Puget Sound Machinery Depot.

McCLURE & McCLURE,

Att'ys Marine Mfg. Supply Co. et al.

S. H. STEELE,

Att'y S. B. Hicks & Sons Co.

H. T. GRANGER,

*Att'y Bogart, Bates & Co. et al.*A. A. ANDERSON, *Att'y A. H. Holstrom.*GEO. H. KING, *Att'y Geo. Broom.*

WARDALL & WARDALL,

Att'ys Whiton Hardware Co.

WRIGHT & KELLEHER,

Att'ys Frederick & Nelson.

EVERETT C. ELLIS,

Att'y Washington Iron Works.

FLUECK & BEBB,

*Att'ys Eagle Brass Foundry.*J. H. ALLEN, *Att'y Chesley Tow Boat — et al.*

CUTTS & DORETY,

Att'ys M. A. Barger & Co.

BENTON EMB-EE.

Att'y Vulcan Iron Works, King & Winge.

KERR & McCORD,

Att'ys Pacific Engineering Co.

GRAY & STERN,

Att'ys for Intervenor Other Than Those Named.

[Endorsed:] Assignment of Errors. Filed in the U. S. Circuit Court, Western Dist. of Washington. Feb. 15, 1907. A. Reeves Ayres, Clerk. W. D. Covington, Dep.

252 In the Circuit Court of the United States, Western District of Washington, Northern Division.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company of Scranton, Penna. (a Corporation), Defendants; Olympic Foundry Company et al., Intervenors.

Stipulation for Diminution of Record on Appeal.

It is hereby stipulated and agreed by and between the parties to the above-entitled action as follows:

I.

That the record may be reduced so as to exclude all pleadings etc., in the above-entitled cause, save and except the following, and that the following shall constitute the record on appeal in said cause,

viz:

- 253 1. Complaint of Crane Company.
2. Notice to claimants to intervene and proof of service and publication thereof.
3. Complaint of intervention of Olympic Foundry Company
4. Complaint of intervention of Eyres Transfer Company.
5. Complaint of intervention of Dunham, Carrigan & Hayden Company.
6. Demurrer of Title Guaranty and Trust Company to complaint of Crane Company.
7. Demurrer of Title Guaranty and Trust Company to complaint of intervention of Olympic Foundry Company.
8. Demurrer of Title Guaranty and Trust Company to complaint of intervention of Eyres Transfer Company.
9. Demurrer of Title Guaranty and Trust Company to complaint of intervention of Dunham, Carrigan & Hayden Company.
10. Order of Court overruling demurrers of Title Guaranty and Trust Company.
11. Answer of Title Guaranty and Trust Company to complaint of Crane Company.
12. Answer of Title Guaranty and Trust Company to complaint of Intervenor Olympic Foundry Company.
- 254 13. Answer of Title Guaranty and Trust Company to complaint of Intervention of Eyres Transfer Company.

14. Answer of Title Guaranty and Trust Company to complaint of intervention of Dunham, Carrigan & Hayden Company.
15. Demurrer of plaintiff to affirmative defense.
16. Order sustaining demurrer to affirmative defenses.
17. Stipulation as to facts.
18. Notice and motion to submit cause for judgment.
19. Findings of fact and conclusions of law.
20. Judgment.
21. Exceptions to findings, conclusions and judgment, and order allowing.
22. Memo. of costs of Crane Company.
23. Memo. of costs of Olympic Foundry Company.
24. Memo. of costs of Dunham, Carrigan & Hayden Company.
25. Memo. of costs of Eyres Transfer Company.
26. Exceptions to cost bills.
27. Clerk's certificate of taxation of costs.
28. Order on review of taxation of costs and exception thereto.
29. Bill of exceptions of proceedings at trial.
- 255 30. Notice of application for order fixing amount of appeal bond.
31. Petition for appeal.
32. Order allowing and fixing amount of cost of supersedeas bond.
33. Bond on appeal.
34. Assignment of errors.
35. Citation and acknowledgment of service.

II.

That the complaint in intervention of each of the intervenors whose complaint of intervention is not set out herein is substantially the same in form and substance as that of the Olympic Foundry Company, and that the demurrers interposed by the Title Guaranty and Trust Company to the other complaints of intervention are the same in substance and arrangement as that interposed to the complaint of said Olympic Foundry Company, and that the answer of the Title Guaranty and Trust Company to each of said complaints of intervention is the same in form and substance as its answer to the Olympic Foundry Company and that each of said intervenors demurred to the affirmative defenses set out in said answer and that each of their demurrers is the same in form and substance as that of the Olympic Foundry Company and that each of the said demurrers was sustained. That ten dollars was taxed in favor of each

256 claimant and against the Title Guaranty and Trust Company, as statutory attorney fees.

III.

That the same judgment should be entered in the case of each of the intervenors that is entered in regard to the claim of the Olympic Foundry Company, excepting as to the amounts which are shown in the statement of facts herein, excepting also so far as the facts

of the individual cases are shown to be different by the statement of the stipulated facts.

Dated this 29th day of January, 1907.

IRA BRONSON AND
D. B. TREFETHEN,

Attorneys Puget Sound Machinery Depot.
McCLURE & McCCLURE,

Att'ys Marine Mnfj. Co. et al.
S. H. STEELE,

Att'y for S. B. Hicks & Sons Co.
H. T. GRANGER,

Attorney for Bogart, Bates & Co. et al.
A. A. ANDERSON, *Att'y for A. H. Holstrom.*

GEO. H. KING, *Attorney for George Broom.*
WARDALL & WARDALL,

Attorneys for Whiton Hardware Company.
KERR & McCORD,

Attorneys Pacific Engineering Company.
WRIGHT & KELLEHER,

Attorneys for Frederick & Nelson.
EVERETT C. ELLIS,

Attorneys for Washington Iron Works.
FLUECK & BEBB,

Attorneys for Eagle Brass Foundry.
CUTTS & DORETY,

Attorneys R. A. Bargar & Company.
J. H. ALLEN,

Attorney Chesley Tow Boat Company.
BENTON EMBREE,

Attorney for Vulcan Iron Works et al.
GRAY & STERN,

Attorneys for all Other Intervenors
Not Specifically Mentioned.

GRAVES, PALMER & MURPHY,

Attorneys for Def't Title Guaranty &
Trust Company of Scranton, Penn.

[Endorsed:] Stipulation for Diminution of Record. Filed in the
U. S. Circuit Court, Western Dist. of Washington. Feb. 15, 1907.
A. Reeves Ayres, Clerk. W. D. Covington, Dep.

258 In the United States Circuit Court for the Western District
of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COM-
PANY (a Corporation), Plaintiff,

vs.

259 PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and
The Title Guaranty and Trust Company of Scranton, Pennsylvania
(a Corporation), Defendants; Olympic Foundry Company
(a Corporation), The Marine Manufacturing & Supply Company
(a Corporation), A. H. Holstrom Iron Works (a Corporation),
Bowles & Company (a Corporation), Sunde & Erland (a Corpo-
ration), Puget Sound Machinery Depot (a Corporation), The
Vulcan Iron Works (a Corporation), Pacific Engineering Works
(a Corporation), S. B. Hicks & Sons Company (a
260 Corporation), George Broom, Whiton Hardware
Company (a Corporation), Frederick and Nelson (a
Corporation), Washington Iron Works (a Corporation),
Eagle Brass Foundry, (a Corporation), Chesley Tow Boat
Company (a Corporation), T. J. King and A. Winge,
Copartners Doing Business in the Name of King & Kinge,
James Johnson, L. W. Davis, Copartners under the Firm Name
and Style of Davis & Buxaum: Schwabacher Hardware Company
(a Corporation), Gorham Rubber Company (a Corporation), B.
D. Bates and R. O. Fraser, Copartners Doing Business as Puget
Sound Patter- Works & Westerman Iron Works (a Corporation),
Appearing by Their Attorneys Messrs. Gray & Stern: Meacham &
Pinard; Dunham, Carrigan & Hayden Company (a Corporation),
M. A. Bargar, Doing Business as M. A. Bargar & Company; F. A.
Flaiole and G. F. Barritt, Copartners Doing Business as Standard
Boiler Works; Charles H. Allmond & Company, Columbia Engi-
neering Works (a Corporation), John E. Good Metal
260 Works (a Corporation), George B. Adair, J. T. Fulmele,
Doing Business as Eagle Iron Foundry; Lewis Anderson
Ford Company (a Corporation), Evres Transfer Company (a Cor-
poration), F. R. Bates and T. S. Clark, Copartners Doing Business
under the Name and Style of Bates & Clark Company; B. Manke,
H. R. Worthington, Intervenors.

Citation on Appeal (Copy).

UNITED STATES OF AMERICA,
Western District of Washington, ss:

The President of the United States to Crane Company, the Above-
named Plaintiff; Bates & Clark Company, B. Manke, John John-

son, and H. T. Granger, Their Attorney; Pacific Engineering Company and Kerr & McCord, Its Attorneys; Davis & Buxbaum, Whiton Hardware Company and Wardell & Wardell, Their Attorneys; Lewis Anderson Ford Company and Chesley Tow Boat Company and Allen & Allen & Stratton, Their Attorneys; Marine Manufacturing & Supply Company, Eyres Transfer Company, Sunde & Erland, Bowles & Company and McClure & McClure, Their Attorneys; Puget Sound Machinery Depot and
 261 Ira Brownson & D. B. Trefethen, Its Attorney; The Vulcan Iron Works and King and Winge and Benton Embree, Their Attorney; George Broom and George H. King, His Attorney; Frederick & Nelson and Wright & Kelleher, Their Attorneys; S. B. Hicks & Sons Company and S. H. Steele, Their Attorney; A. H. Holstrom Iron Works Company and A. A. Anderson and Howard M. Hall, Their Attorneys; Eagle Brass Foundry and E. H. Flueck, Its Attorney; Washington Iron Works and Everett C. Ellis, Its Attorney; M. A. Barger & Company and Cutts & Dorety, Their Attorneys; Schwabacher Hardware Company, Gorham Rubber Company, Puget Sound Pattern Works, Meachem & Pinard, Dunham, Carrigan & Hayden Company, Westerman Iron Works, Standard Boiler Works, Chas. H. Allmond & Company, Columbia Engineering Works, John E. Good Metal Works, George B. Adair, Eagle Iron Foundry, Olympic Foundry Company, H. R. Worthington and Gray & Stern, Their Attorneys, Greeting:

You and each of you are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be held in the city of San Francisco, in the State of California, within thirty days from the date of this citation, pursuant to an appeal filed in the clerk's office of the Circuit Court
 262 of the United States for the Western District of Washington. Northern Division, wherein the Title Guaranty and Trust Company of Scranton, Pennsylvania, is appellant and you are respondents, and to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 21st day of February, 1907.

C. H. HANFORD,

*United States District Court Judge
 Presiding Over said Court.*

Attest:

[SEAL.]

A. REEVES AYRES, *Clerk,*
 By W. D. COVINGTON, *Deputy.*

We hereby accept due and legal service this 21st day of February, 1907, of the foregoing citation.

H. T. GRANGER,

*Attorney for Crane Company, Bates & Clark,
B. Manke, John Johnston.*

KERR & McCORD,

Attorneys for Pacific Engineering Co.

WARDALL & WARDALL,

*Attorneys for Davis & Buzbaum
and Whiton Hardware Co.*

ALLEN, ALLEN & STRATTON,

*Attorneys for Lewis, Anderson Ford Co. and
Chesley Tow Boat Co.*

McCLURE & McCLURE,

*Attorneys for Marine Mfg. & Supply Co., Eyres Transfer
Co., Sunde and Erland, Bowles & Company.*

IRA BRONSON AND

D. B. TREFETHEN,

Attorneys for Puget Sound Machinery Depot.

BENTON EMBREE,

*Attorney for Vulcan Iron Works
and King & Winge.*

GEO. H. KING,

By M. H. VAN NUYS,

Attorney for George Broom.

WRIGHT & KELLEHER,

Attorneys for Frederick & Nelson.

S. H. STEELE,

Attorney for S. B. Hicks & Sons Co.

A. A. ANDERSON,

Attorney for A. H. Holstrom Iron Works Co.

FLUECK & BEBB,

Attorneys for Eagle Brass Foundry.

EVERETT C. ELLIS,

Attorney for Washington Iron Works.

CUTTS & DORETY,

Attorneys for M. A. Barger & Company.

GRAY & STERN,

Attorneys for all Other Parties.

[Endorsed:] Citation. Filed in the U. S. Circuit Court, Western Dist. of Washington. Feb. 23, 1907. A. Reeves Ayres, Clerk. W. D. Covington, Dep.

In the United States Circuit Court for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

265 PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and the Title Guaranty and Trust Company of Scranton, Pennsylvania (a Corporation), Defendants; Olympic Foundry Company (a Corporation), The Marine Manufacturing & Supply Company (a Corporation), A. H. Holmstrom, Doing Business as A. H. Holmstrom Iron Works; Bowles Company (a Corporation), Sunde and Erland Company (a Corporation), Puget Sound Machinery Depot (a Corporation), The Vulcan Iron Works (a Corporation), Pacific Engineering Company (a Corporation), S. B. Hicks & Sons Company (a Corporation), George Broom, Whiton Hardware Company (a Corporation), Frederick & Nelson (a Corporation), Washington Iron Works Company (a Corporation), James Tracy and John Tracy, Copartners, Doing Business as The Eagle Brass Foundry; Chesley Tow Boat Company (a Corporation), T. J. King and A. Winge, Copartners, Doing Business under the Name of King & Winge; James Johnston, L. W. Davis and J. H. Buxbaum, Copartners, Doing Business under the Firm Name of Davis & Buxbaum; Schwabacher Hardware Company (a Corporation), Gorham Rubber Company (a Corporation), B. T. Bates and R. O. Fraser, Copartners, 266 Doing Business as Puget Sound Pattern Works; J. G. Meacham and W. J. Pinard, Copartners, Doing Business as Meacham & Pinard; Dunham, Carrigan & Hayden Company (a Corporation); M. A. Bargar, Doing Business as M. A. Bargar & Company; Westerman Iron Works (a Corporation), F. J. Flajole and G. F. Barritt, Copartners, Doing Business as Standard Boiler Works; Charles H. Allmond and G. E. Ahlberg, Copartners, Doing Business as Charles H. Allmond & Company; Columbia Engineering Works (a Corporation), John E. Good, Doing Business under the Firm Name and Style of John E. Good Metal Works; J. T. Fulmele, Doing Business under the Firm Name and Style of Eagle Iron Foundry; Lewis, Anderson, Ford Co. Inc. (a Corporation); Eyres Transfer Company (a Corporation), F. R. Bates and T. S. Clark, Copartners, Doing Business under the Firm Name and Style of Bates & Clark Company; B. Manke, George B. Adair, and Henry R. Worthington, Intervenor.

267 *Amended Citation on Appeal (Copy).*

UNITED STATES OF AMERICA,
Western District of Washington, ss:

The President of the United States to Crane Company, a Corporation, the Above-named Plaintiff; F. R. Bates and T. S. Clark, Copartners, Doing Business as Bates & Clark Company; B. Manke, James Johnston, Intervenor, and to H. T. Granger, Their Attorney; Pacific Engineering Company, a Corporation,

- Intervenor, and to Kerr & McCord, Its Attorneys; Whiton Hardware Company a Corporation; L. W. Davis and J. H. Buxbaum, Copartners, Doing Business under the Firm Name and Style of Davis & Buxbaum, Intervenor, and to Wardell & Wardell, Their Attorneys; Lewis, Anderson, Ford Co., Inc., a Corporation; Chesley Tow Boat Company, a Corporation, Intervenor, and to Allen, Allen & Stratton, Their Attorneys; The Marine Manufacturing and Supply Company, a Corporation; Eyres Transfer Company, a Corporation; Bowles Company, a Corporation; Sunde and Erland Company, a Corporation, Intervenor, and to McClure & McClure; Puget Sound Machinery Depot, a Corporation, Intervenor, and to Ira Bronson and D. B. Trefethen, Its Attorneys; The Vulcan
- 268 Iron Works, a Corporation; J. T. King and A. Winge, Copartners, Doing Business under the Name of King & Winge, Intervenor, and to Benton Embree, Their Attorney; George Broom, Intervenor, and to George H. King, His Attorney; Frederick & Nelson, a Corporation, Intervenor, and to Wright & Kelleher, Its Attorneys; S. B. Hicks & Sons Company, a Corporation, Intervenor, and to S. H. Steele, Its Attorney; A. H. Holmstrom, Doing Business as A. H. Holmstrom Iron Works, Intervenor, and to A. A. Anderson and Howard M. Hall, His Attorneys; James Tracy and John Tracy, Copartners, Doing Business as The Eagle Brass Foundry, Intervenor, and to E. H. Fleuck, Their Attorney; Washington Iron Works Company, a Corporation, Intervenor, and to Everett C. Ellis, Its Attorney; M. A. Bargar, Doing Business as M. A. Bargar & Company, Intervenor, and to Cutts & Dorety, His Attorney; Westerman Iron Works, a Corporation; Schwabacher Hardware Company, a Corporation; B. D. Bates and R. O. Fraser, Copartners, Doing Business under the Firm Name and Style of Puget Sound Pattern Works; J. T. Fulmele, Doing Business under Firm Name and Style of Eagle Iron Foundry; J. G. Meacham and W. J. Pinard, Copartners,
- 269 Doing Business as Meacham & Pinard; George B. Adair; Columbia Engineering Works, a Corporation; John E. Good, Doing Business as John E. Good Metal Works; F. J. Flajole and C. F. Barritt, Copartners, Doing Business as Standard Boiler Works; Charles H. Allmond and G. E. Ahlberg, Copartners, Doing Business as Charles H. Allmond & Company; Gorham Rubber Company, a Corporation; Olympic Foundry Company, a Corporation; Dunham, Carrigan & Hayden Company, a Corporation; Henry Worthington, Intervenor; Puget Sound Engine Works, Inc., Defendant, and to Messrs. Gray & Stern, Their Attorneys, Greeting:

You and each of you are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be held in the city of San Francisco, in the State of California, within thirty days from the date of this citation, pursuant to an appeal filed in the clerk's office of the Circuit Court of the United States for the Western District of Washington, Northern Division, wherein the Title Guaranty and Trust Company of Scranton, Pennsylvania, is appellant and you are respondents, and to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done the parties in that behalf.

270 Witness the Honorable Melville W. Fuller, Chief Justice
of the Supreme Court of the United States, this 8th day of
March, 1907.

C. H. HANFORD,

*United States District Court Judge
Presiding Over said Court.*

Attest: [SEAL.] A. REEVES AYRES, Clerk,
By R. M. HOPKINS, Deputy.

We hereby acknowledge due and legal service this 9th day of
March, 1907, of the foregoing citation on appeal.

H. T. GRANGER,

*Attorneys for Crane Co., Plaintiff, and Bates & Clark
Co., B. Manke, and James Johnston, Intervenor.*

KERR & McCORD,

Attorneys for Pacific Engineering Company, Intervenor.

WARDALL & WARDALL,

*Attorneys for Whiton Hardware Co. and
Davis & Buxbaum, Intervenor.*

ALLEN, ALLEN & STRATTON,

*Attorneys for Lewis, Anderson, Ford Co., Inc., &
Chesley Tow Boat Co., Intervenor.*

271

McCLURE & McCLURE,

*Attorneys for The Marine Manufacturing & Supply
Co., Eyres Transfer Co., Bowles Co., and Sunde &
Erland Co., Intervenor.*

IRA BRONSON AND

D. B. TREFETHEN,

Attorneys for Puget Sound Machinery Depot, Intervenor.

BENTON EMBREE,

*Attorney for The Vulcan Iron Works and
King & Winge, Intervenor.*

GEO. H. KING,

Attorney for George Broom, Intervenor.

WRIGHT & KELLEHER,

Attorneys for Frederick & Nelson, Intervenor.

S. A. STEELE,

Attorneys for S. B. Hicks & Sons Co., Intervenor.

A. A. ANDERSON,

Attorneys for A. H. Holstrom Iron Works, Intervenor.

FLUECK & BEBB,

Attorney for The Eagle Brass Foundry, Intervenor.

EVERETT C. ELLIS,

Attorneys for Washington Iron Works Co., Intervenor.

CUTTS & DORETY,

Attorneys for M. A. Bargar & Company, Intervenor.

272

GRAY & STERN,

*Attorneys for Puget Sound Engine Works, Inc., and
Waterman Iron Works, Schwabacher Hardware Co.,
Puget Sound Pattern Works, Eagle Iron Foundry,
Meacham & Pinard, George B. Adair, Columbia Engi-
neering Works, John E. Good Metal Works, Standard
Boiler Works, Charles H. Allmond & Company, Gor-
ham Rubber Company, Olympic Foundry Co., Dun-
ham, Carrigan & Hayden Co., Henry R. Worthing-
ton, Intervenor, and to all Other Parties.*

[Endorsed:] Amended Citation on Appeal. Filed in the U. S. Circuit Court, Western Dist. of Washington Mar. 11, 1907. A. Reeves Ayres, Clerk. W. D. Covington, Dep.

273 In the United States Circuit Court for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and The Title Guaranty & Trust Company of Scranton, Pennsylvania (a Corporation), Defendants; Olympic Foundry Company (a Corporation) et al., Intervenor.

Petition for Writ of Error.

Comes now the above-entitled defendant, The Title Guaranty and Trust Company of Scranton, Pennsylvania, a corporation, feeling itself aggrieved by the findings of fact, conclusions of law and judgment of the court entered in the above-entitled cause on the 19th day of December, 1906, and all the orders and rulings made

274 in the above-entitled cause, petitions the said court for an order allowing the said defendant to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided and the rules of said court, and that a transcript of the record, proceedings and papers in this cause duly authenticated may be sent to the said Circuit Court of Appeals, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error; and that upon the giving of such security all further proceedings in said court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit, and your petitioner will ever pray.

Dated this 8th day of March, 1907

GRAVES, PALMER & MURPHY,
*Attorneys for Defendant, Title Guaranty and
Trust Company of Scranton, Pennsylvania.*

[Endorsed:] Petition for Writ of Error. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 8, 1907. A. Reeves Ayres, Clerk. R. M. Hopkins, Dep.

275 In the United States Circuit Court for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and The Title Guaranty & Trust Company of Scranton, Pennsylvania (a Corporation), Defendants; Olympic Foundry Company (a Corporation) et al., Intervenor.

Order Allowing a Writ of Error and Fixing the Security.

This matter coming on to be heard on the motion of Messrs. Graves, Palmer & Murphy, attorneys for the Title Guaranty and Trust Company of Scranton, Pennsylvania, and upon filing a petition for a writ of error and assignment of errors in the above-entitled cause, and good cause appearing therefor.

276 It is ordered that a writ of error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the judgment heretofore entered in this cause, and that the amount of the bond on said writ of error be and the same is hereby fixed in the sum of fifteen thousand dollars (\$15,000.00).

Dated this 8th day of March, 1907.

C. H. HANFORD, *Judge.*

[Endorsed:] Order. Filed in the U. S. Circuit Court, Western Dist. of Washington, Mar. 8, 1907. A. Reeves Ayres, Clerk. R. M. Hopkins, Dep.

In the United States Circuit Court for the Western District of Washington, Northern Division.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and
 The Title Guaranty & Trust Company of Scranton, Pennsylvania (a Corporation), Defendants; Olympic Foundry Company (a Corporation), The Marine Manufacturing and Supply Company (a Corporation), A. H. Holstrom, Doing Business as A. H. Holstrom Iron Works, Bowles Company (a Corporation), Sunde and Erland Company (a Corporation), Puget Sound Machinery Depot (a Corporation), The Vulcan Iron Works (a Corporation), Pacific Engineering Company (a Corporation), S. B. Hicks & Sons Company (a Corporation), George Broom, Whiton Hardware Company (a Corporation), Frederick & Nelson (a Corporation), James Tracy and John Tracy, Copartners Doing Business as The Eagle Brass Foundry, Chesley Tow Boat Company (a Corporation), T. J. King and A. Winge, Copartners Doing Business under the Name of King & Winge; James Johnston, L. W. Davis, and J. H. Buxbaum, Copartners Doing Business under the Firm Name of Davis & Buxbaum; Schwabacher Hardware Company (a Corporation), Gorham Rubber Company (a Corporation), B. D. Bates and R. O. Fraser, Copartners
 Doing Business as Puget Sound Pattern Works; J. G. Meacham and W. J. Pinard, Copartners Doing Business as Meacham & Pinard, Dunham, Carriagan & Hayden Company (a Corporation), M. A. Bargar, Doing Business as M. A. Bargar & Company, Westerman Iron Works (a Corporation), F. J. Flajole and C. F. Barritt, Copartners Doing Business as Standard Boiler Works; Charles H. Allmond and G. E. Ahlberg, Copartners Doing Business as Charles H. Allmond & Company; Columbia Engineering Works (a Corporation), John E. Good, Doing Business under the Firm Name and Style of John E. Good Metal Works; J. T. Fulmele, Doing Business under the Firm Name and Style of Eagle Iron Foundry; Lewis Anderson, Ford Co., Inc. (a Corporation), Eyres Transfer Company (a Corporation), F. R. Bates and T. S. Clark (Copartners), Doing Business under the Firm Name and Style of Bates and Clark Company; B. Manke, George B. Adair, and Henry R. Worthington, Intervenor.

279 *Bond on Writ of Error.*

Know all men by these presents: That the Title Guaranty and Trust Company of Scranton, Pennsylvania, a corporation, as principal, and The Metropolitan Surety Company, a corporation duly and regularly organized and authorized to do business in the State of Washington, as surety, in behalf of said principal, are held and firmly bound unto the plaintiff and the codefendants of the said

principal and the intervenors in the above-entitled action in the full and just sum of fifteen thousand dollars (\$15,000.00) to be paid to the said plaintiff, codefendant and intervenors, their attorneys, successors or assigns, to which payment well and truly to be made we bind ourselves, our successors and assigns jointly and severally firmly by these presents.

Sealed with our seals and dated this 8th day of March, 1907.

Whereas, the above-entitled defendant, the Title Guaranty and Trust Company has sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment in the above-entitled cause by the Circuit Court of the United States for the Western District of Washington, Northern Division.

Now, therefore, the condition of this obligation is such
280 that if the above-named principal, the Title Guaranty and

Trust Company of Scranton, Pennsylvania, shall prosecute said writ of error to effect and answer all costs and damages if it fails to make its plea good then the above obligation to be void, otherwise to remain in full force and virtue.

[SEAL.]

TITLE GUARANTY AND TRUST
COMPANY OF SCRANTON, PENN-
SYLVANIA, [SEAL.]

By CLARENCE S. PARKER,

Its Manager and General Agent.

THE METROPOLITAN SURETY COM-
PANY,

By CHARLES T. HUGHES,

Agent and Attorney in Fact.

C. T. HUGHES COMPANY,

State Agent The Metropolitan Surety Company.

311-312 Pioneer Building, Seattle, Wash.

Attest:

H. C. GILL,

Resident Ass't Secretary and Attorney in Fact.

The above bond and the sufficiency of the surety thereon are hereby approved this 8th day of March, 1907.

C. H. HANFORD, *Judge.*

281 [Endorsed:] Bond. Filed in the U. S. Circuit Court,
Western Dist. of Washington. Mar. 8, 1907. A. Reeves
Ayres, Clerk. R. M. Hopkins, Dep.

In the Circuit Court of the United States, Western District of
Washington, Northern Division.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE
COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and
Title Guaranty and Trust Company of Scranton, Pennsylvania
(a Corporation), et al., Defendants; Olympic Foundry Company
(a Corporation) et al., Interveners.

Assignment of Errors on Writ of Error.

282 Comes now the above-entitled defendant, the Title Guaranty and
Trust Company of Scranton, Pennsylvania, a corporation, by its
attorneys, the undersigned, and in connection with its petition for
a writ of error filed herein and herewith for the review of
a final order, judgment or decree of the above-entitled court
entered herein on the 19th day of December, 1906, and all
orders entered in said cause affecting the substantial rights of this
defendant says that said final order and judgment, together with
the conclusions of law and the orders entered previous thereto in
said cause effecting the substantial rights of this defendant are
erroneous in the following particulars, to wit:

1.

The Court erred in entering an order overruling the demurrer of
said defendants to complaint of plaintiff and the separate com-
plaints of intervention of Puget Sound Machinery Depot, a cor-
poration; The Marine Manufacturing & Supply Company, a cor-
poration, Sunde and Erland Company, a corporation, Eyres Trans-
fer Company, a corporation, Bowles Company, a corporation, S. B.
Hicks & Sons Company, a corporation, F. R. Bates and T. S. Clark,
copartners doing business under the firm name and style of Bates
& Clark Company; B. Manke, James Johnston, A. H. Holmstrom
doing business as A. H. Holmstrom Iron Works; George Broom,
Whitton Hardware Company, a corporation, Frederick & Nelson, a
corporation, Washington Iron Works Company, a corporation,
James Tracy and John Tracy, copartners doing business as The
Eagle Brass Foundry; M. A. Bargar doing business as M. A.
283 Bargar & Company; Chesley Tow Boat Company, a corpora-
tion; Lewis, Anderson, Ford Co., Inc., a corporation; The
Vulcan Iron Works, a corporation; T. J. King and A. Winge,
copartners doing business under the name of King & Winge;
George B. Adair; Columbia Engineering Works, a corporation; Gor-
ham Rubber Company, a corporation; Henry R. Worthington;
Westerman Iron Works, a corporation; J. G. Meacham and W. J.
Pinard, copartners doing business as Meacham & Pinard; Dunham.
Carrigan & Hayden Company, a corporation; Olympic Foundry
Company, a corporation; F. J. Flajole and G. F. Barritt, copartners
doing business as Standard Boiler Works, Schwabacher Hardware

Company, a corporation; J. T. Fulmale, doing business under the firm name and style of Eagle Iron Foundry; John E. Good, doing business under the firm name and style of John E. Good Metal Works; Charles M. Allmond and G. E. Ahlberg, copartners doing business as Charles H. Allmond & Company; B. D. Bates and R. O. Fraser, copartners doing business as Puget Sound Pattern Works; Pacific Engineering Company, a corporation; L. W. Davis and J. H. Buxbaum, copartners doing business under the firm name of Davis & Buxbaum.

2.

284 The said Court erred in overruling the demurrer of said defendant to the complaint of the above-entitled plaintiff, Crane Company.

3.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Puget Sound Machinery Depot.

4.

The Court erred in overruling the demurrer of said defendant to the complainant in intervention of the Marine Manufacturing and Supply Company.

5.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Eyres Transfer Company.

6.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Bowles Company.

7.

The Court erred in overruling the demurrer of said defendant to the complaint of S. B. Hicks & Sons Company.

8.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Bates & Clark Company.

8a.

285 The Court erred in overruling the demurrer of said defendant to the complaint in intervention of The Eagle Brass Foundry.

9.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of B. Menke.

10.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of James Johnston.

11.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of A. H. Holstrom Iron Works.

12.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of George Broom.

13.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Whiton Hardware Company.

14.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Frederick & Nelson.

15.

286 The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Washington Iron Works.

16.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of M. A. Bargar & Company.

18.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Chesley Tow Boat Company.

19.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Lewis, Anderson, Ford Company.

20.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Vulcan Iron Works.

21.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of King & Winge.

22.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of George B. Adair.

23.

287 The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Columbia Engineering Works.

24.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Gorham Rubber Company.

25.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Henry E. Worthington.

26.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Westerman Iron Works.

27.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Meacham & Pinard.

28.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Dunham, Carrigan & Hayden Company.

29.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Olympic Foundry Company.

288

30.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Standard Boiler Works.

31.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Schwabacher Hardware Company.

32.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of J. T. Fulmele.

33.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of John N. Good Metal Works.

34.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Chas. H. Allmond & Company.

35.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Puget Sound Pattern Works.

36.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Pacific Engineering Company.

289

37.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Davis & Buxbaum.

38.

The Court erred in overruling the demurrer of said defendant to the complaint in intervention of Eagle Iron Foundry.

39.

The Court erred in sustaining the demurrer of the above-entitled plaintiff to the first affirmative defense set out in its answer.

40.

The Court erred in sustaining the plaintiff's demurrer to the second affirmative defense set out in said answer.

41.

The Court erred in sustaining a demurrer of plaintiff to the third further affirmative defense set out in said answer.

42.

The Court erred in sustaining a demurrer of plaintiff to the fourth affirmative defense set out in said answer.

43.

The Court erred in sustaining the demurrer of the intervenor Puget Sound Machinery Depot to the first affirmative defense set out in said answer.

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44.

The Court erred in sustaining the demurrer of the intervenor Puget Sound Machinery Depot to the second affirmative defense set out in said answer.

45.

The Court erred in sustaining the demurrer of the intervenor Puget Sound Machinery Depot to the third affirmative defense set out in said answer.

46.

The Court erred in sustaining the demurrer of the intervenor Puget Sound Machinery Depot to the fourth affirmative defense set out in said answer.

47.

The Court erred in sustaining the demurrer of the intervenor Marine Mnfg. Supply Co. to the first affirmative defense set out in said answer.

48.

The Court erred in sustaining the demurrer of the intervenor Marine Mnfg. Supply Co. to the second affirmative defense set out in said answer.

49.

The Court erred in sustaining the demurrer of the intervenor Marine Mnfg. Supply Co. to the third affirmative defense set out in said answer.

50.

291 The Court erred in sustaining the demurrer of the intervenor Marine Mnfg. Supply Company to the fourth affirmative defense set out in the answer.

51.

The Court erred in sustaining the demurrer of the intervenor Sunde & Erland, to the first affirmative defense set out in said answer.

52.

The Court erred in sustaining the demurrer of the intervenor Sunde & Erland to the second affirmative defense set out in said answer.

53.

The Court erred in sustaining the demurrer of the intervenor Sunde & Erland to the third affirmative defense set out in said answer.

54.

The Court erred in sustaining the demurrer of the intervenor Sunde & Erland to the fourth affirmative defense set out in said answer.

55.

The Court erred in sustaining the demurrer of the intervenor Eyres Transfer Company to the first affirmative defense set out in said answer.

56.

The Court erred in sustaining the demurrer of the intervenor Eyres Transfer Company to the second affirmative defense set out in said answer.

292

57.

The Court erred in sustaining the demurrer of the intervenor Eyres Transfer Company to the third affirmative defense set out in said answer.

58.

The Court erred in sustaining the demurrer of the intervenor Eyres Transfer Company to the fourth affirmative defense set out in said answer.

59.

The Court erred in sustaining the demurrer of the intervenor Bowles Company to the first affirmative defense set out in said answer.

60.

The Court erred in sustaining the demurrer of the intervenor Bowles Company to the second affirmative defense set out in said answer.

61.

The Court erred in sustaining the demurrer of the intervenor Bowles Company to the third affirmative defense set out in said answer.

62.

The Court erred in sustaining the demurrer of the intervenor Bowles Company to the fourth affirmative defense set out in said answer.

63.

293 The Court erred in sustaining the demurrer of the intervenor S. B. Hicks & Sons Co. to the first affirmative defense set out in said answer.

64.

The Court erred in sustaining the demurrer of the intervenor S. B. Hicks & Sons Co. to the second affirmative defense set out in said answer.

65.

The Court erred in sustaining the demurrer of the intervenor S. B. Hicks & Sons Co. to the third affirmative defense set out in said answer.

66.

The Court erred in sustaining the demurrer of the intervenor S. B. Hicks & Sons Co. to the fourth affirmative defense set out in said answer.

67.

The Court erred in sustaining the demurrer of the intervenor Bates & Clark to the first affirmative defense set out in said answer.

68.

The Court erred in sustaining the demurrer of the intervenor Bates & Clark to the second affirmative defense set out in said answer.

69.

The Court erred in sustaining the demurrer of the intervenor Bates & Clark to the third affirmative defense set out in said answer.

70.

294 The Court erred in sustaining the demurrer of the intervenor Bates & Clark to the fourth affirmative defense set out in said answer.

71.

The Court erred in sustaining the demurrer of the intervenor Manke and James Johnson to the first affirmative defense set out in said answer.

72.

The Court erred in sustaining the demurrer of the intervenor B. Manke and James Johnson to the second affirmative defense set out in said answer.

73.

The Court erred in sustaining the demurrer of the intervenor B. Manke and James Johnson to the third affirmative defense set out in said answer.

74.

The Court erred in sustaining the demurrer of the intervenor B. Mank and James Johnson to the fourth affirmative defense set out in said answer.

75.

The Court erred in sustaining the demurrer of the intervenor A. H. Holstrom to the first affirmative defense set out in said answer.

76.

295 The Court erred in sustaining the demurrer of the intervenor A. H. Holstrom to the second affirmative defense set out in said answer.

77.

The Court erred in sustaining the demurrer of the intervenor A. H. Holstrom to the third affirmative defense set out in said answer.

78.

The Court erred in sustaining the demurrer of the intervenor A. H. Holstrom to the fourth affirmative defense set out in said answer.

79.

The court erred in sustaining the demurrer of the intervenor George Broom to the first affirmative defense set out in said answer.

80.

The Court erred in sustaining the demurrer of the intervenor George Broom to the second affirmative defense set out in said answer.

81.

The Court erred in sustaining the demurrer of the intervenor George Broom to the third affirmative defense set out in said answer.

82.

The Court erred in sustaining the demurrer of the intervenor George Broom to the fourth affirmative defense set out in said answer.

296

83.

The Court erred in sustaining the demurrer of the intervenor Whiton Hardware Co. to the first affirmative defense set out in said answer.

84.

The Court erred in sustaining the demurrer of the intervenor Whiton Hardware Co. to the second affirmative defense set out in said answer.

85.

The Court erred in sustaining the demurrer of the intervenor Whiton Hardware Co. to the third affirmative defense set out in said answer.

86.

The Court erred in sustaining the demurrer of the intervenor Whiton Hardware Co. to the fourth affirmative defense set out in said answer.

87.

The Court erred in sustaining the demurrer of the intervenor Pacific Engineering Co. to the first affirmative defense set out in said answer.

88.

The Court erred in sustaining the demurrer of the intervenor Pacific Engineering Co. to the second affirmative defense set out in said answer.

89.

297 The Court erred in sustaining the demurrer of the intervenor Pacific Engineering Co. to the third affirmative defense set out in said answer.

90.

The Court erred in sustaining the demurrer of the intervenor Pacific Engineering Co. to the fourth affirmative defense set out in said answer.

91.

The Court erred in sustaining the demurrer of the intervenor Frederick & Nelson to the first affirmative defense set out in said answer.

92.

The Court erred in sustaining the demurrer of the intervenor Frederick & Nelson to the second affirmative defense set out in said answer.

94.

The Court erred in sustaining the demurrer of the intervenor Frederick & Nelson to the third affirmative defense set out in said answer.

95.

The Court erred in sustaining the demurrer of the intervenor Frederick & Nelson to the fourth affirmative defense set out in said answer.

96.

The Court erred in sustaining the demurrer of the intervenor Washington Iron Works to the first affirmative defense set out in said answer.

298

97.

The Court erred in sustaining the demurrer of the intervenor Washington Iron Works to the second affirmative defense set out in said answer.

98.

The Court erred in sustaining the demurrer of the intervenor Washington Iron Works to the third affirmative defense set out in said answer.

99.

The Court erred in sustaining the demurrer of the intervenor Washington Iron Works to the fourth affirmative defense set out in said answer.

100.

The Court erred in sustaining the demurrer of the intervenor Eagle Brass Foundry to the first affirmative defense set out in said answer.

101.

The Court erred in sustaining the demurrer of the intervenor Eagle Brass Foundry to the second affirmative defense set out in said answer.

102.

The Court erred in sustaining the demurrer of the intervenor Eagle Brass Foundry to the third affirmative defense set out in said answer.

103.

299 The Court erred in sustaining the demurrer of the intervenor Eagle Brass Foundry to the fourth affirmative defense set out in said answer.

104.

The Court erred in sustaining the demurrer of the intervenor M. A. Bargar & Company to the first affirmative defense set out in said answer.

105.

The Court erred in sustaining the demurrer of the intervenor M. A. Bargar & Company to the second affirmative defense set out in said answer.

106.

The Court erred in sustaining the demurrer of the intervenor M. A. Bargar & Company to the third affirmative defense set out in said answer.

107.

The Court erred in sustaining the demurrer of the intervenor M. A. Bargar & Company to the fourth affirmative defense set out in said answer.

108.

The Court erred in sustaining the demurrer of the intervenor Chesley Tow Boat Company to the first affirmative defense set out in said answer.

109.

The Court erred in sustaining the demurrer of the intervenor Chesley Tow Boat Company to the second affirmative defense set out in said answer.

300

110.

The Court erred in sustaining the demurrer of the intervenor Chesley Tow Boat Company to the third affirmative defense set out in said answer.

111.

The Court erred in sustaining the demurrer of the intervenor Chesley Tow Boat Company to the fourth affirmative defense set out in said answer.

112.

The Court erred in sustaining the demurrer of the intervenor Lewis, Anderson & Foard Co., to the first affirmative defense set out in said answer.

113.

The Court erred in sustaining the demurrer of the intervenor Lewis, Anderson & Foard Co., to the second affirmative defense set out in said answer.

114.

The Court erred in sustaining the demurrer of the intervenor Lewis, Anderson & Foard Co., to the third affirmative defense set out in said answer.

115.

The Court erred in sustaining the demurrer of the intervenor Lewis, Anderson & Foard Co., to the fourth affirmative defense set out in said answer.

116.

301 The Court erred in sustaining the demurrer of the intervenor Vulcan Iron Works to the first affirmative defense set out in said answer.

117.

The Court erred in sustaining the demurrer of the intervenor Vulcan Iron Works to the second affirmative defense set out in said answer.

118.

The Court erred in sustaining the demurrer of the intervenor Vulcan Iron Works to the third affirmative defense set out in said answer.

119.

The Court erred in sustaining the demurrer of the intervenor Vulcan Iron Works to the fourth affirmative defense set out in said answer.

120.

The Court erred in sustaining the demurrer of the intervenor King & Winge to the first affirmative defense set out in said answer.

121.

The Court erred in sustaining the demurrer of the intervenor King & Winge to the second affirmative defense set out in said answer.

122.

The Court erred in sustaining the demurrer of the intervenor King & Winge to the third affirmative defense set out in said answer.

302

123.

The Court erred in sustaining the demurrer of the intervenor King & Winge to the fourth affirmative defense set out in said answer.

124.

The Court erred in sustaining the demurrer of the intervenor George B. Adair to the first affirmative defense set out in said answer.

125.

The Court erred in sustaining the demurrer of the intervenor George B. Adair to the second affirmative defense set out in said answer.

126.

The Court erred in sustaining the demurrer of the intervenor George B. Adair to the third affirmative defense set out in said answer.

127.

The Court erred in sustaining the demurrer of the intervenor George B. Adair to the fourth affirmative defense set out in said answer.

128.

The Court erred in sustaining the demurrer of the intervenor Columbia Engineering Works to the first affirmative defense set out in said answer.

129.

303 The Court erred in sustaining the demurrer of the intervenor Columbia Engineering Works to the second affirmative defense set out in said answer.

130.

The Court erred in sustaining the demurrer of the intervenor Columbia Engineering Works to the third affirmative defense set out in said answer.

131.

The Court erred in sustaining the demurrer of the intervenor Columbia Engineering Works to the fourth affirmative defense set out in said answer.

132.

The Court erred in sustaining the demurrer of the intervenor Gorham Rubber Co. to the first affirmative defense set out in said answer.

133.

The Court erred in sustaining the demurrer of the intervenor Gorham Rubber Co., to the second affirmative defense set out in said answer.

134.

The Court erred in sustaining the demurrer of the intervenor, Gorham Rubber Company, to the third affirmative defense set out in said answer.

135.

The Court erred in sustaining the demurrer of the intervenor, Gorham Rubber Company, to the fourth affirmative defense set out in said answer.

304

136.

The Court erred in sustaining the demurrer of the intervenor, Henry R. Worthington, to the first affirmative defense set out in said answer.

137.

The Court erred in sustaining the demurrer of the intervenor, Henry R. Worthington, to the second affirmative defense set out in said answer.

138.

The Court erred in sustaining the demurrer of the intervenor, Henry R. Worthington, to the third affirmative defense set out in said answer.

139.

The Court erred in sustaining the demurrer of the intervenor, Henry R. Worthington, to the fourth affirmative defense set out in said answer.

140.

The Court erred in sustaining the demurrer of the intervenor, Westerman Iron Works, to the first affirmative defense set out in said answer.

141.

The Court erred in sustaining the demurrer of the intervenor, Westerman Iron Works, to the second affirmative defense set out in said answer.

142.

305 The Court erred in sustaining the demurrer of the intervenor, Westerman Iron Works, to the third affirmative defense set out in said answer.

143.

The Court erred in sustaining the demurrer of the intervenor, Westerman Iron Works, to the fourth affirmative defense set out in said answer.

144.

The Court erred in sustaining the demurrer of the intervenor, Meacham & Pinard, to the first affirmative defense set out in said answer.

145.

The Court erred in sustaining the demurrer of the intervenor, Meacham & Pinard, to the second affirmative defense set out in said answer.

146.

The Court erred in sustaining the demurrer of the intervenor, Meacham & Pinard, to the third affirmative defense set out in said answer.

147.

The Court erred in sustaining the demurrer of the intervenor, Meacham & Pinard, to the fourth affirmative defense set out in said answer.

148.

The Court erred in sustaining the demurrer of the intervenor, Dunham, Carrigan & Hayden Company, to the first affirmative defense set out in said answer.

306

149.

The Court erred in sustaining the demurrer of the intervenor, Dunham, Carrigan & Hayden Company, to the second affirmative defense set out in said answer.

150.

The Court erred in sustaining the demurrer of the intervenor, Dunham, Carrigan & Hayden Company, to the third affirmative defense set out in said answer.

151.

The Court erred in sustaining the demurrer of the intervenor, Dunham, Carrigan & Hayden Company, to the fourth affirmative defense set out in said answer.

152.

The Court erred in sustaining the demurrer of the intervenor, Olympic Foundry Company, to the first affirmative defense set out in said answer.

153.

The Court erred in sustaining the demurrer of the intervenor, Olympic Foundry Company, to the second affirmative defense set out in said answer.

154.

The Court erred in sustaining the demurrer of the intervenor, Olympic Foundry Company, to the third affirmative defense set out in said answer.

307

155.

The Court erred in sustaining the demurrer of the intervenor, Olympic Foundry Company, to the fourth affirmative defense set out in said answer.

156.

The Court erred in sustaining the demurrer of the intervenor, Standard Boiler Works, to the first affirmative defense set out in said answer.

157.

The Court erred in sustaining the demurrer of the intervenor, Standard Boiler Works, to the second affirmative defense set out in said answer.

158.

The Court erred in sustaining the demurrer of the intervenor, Standard Boiler Works, to the third affirmative defense set out in said answer.

159.

The Court erred in sustaining the demurrer of the intervenor, Standard Boiler Works, to the fourth affirmative defense set out in said answer.

160.

The Court erred in sustaining the demurrer of the intervenor, Schwabacher Hardware Company, to the first affirmative defense set out in said answer.

161.

308 The Court erred in sustaining the demurrer of the intervenor, Schwabacher Hardware Company, to the second affirmative defense set out in said answer.

162.

The Court erred in sustaining the demurrer of the intervenor, Schwabacher Hardware Company, to the third affirmative defense set out in said answer.

163.

The Court erred in sustaining the demurrer of the intervenor, Schwabacher Hardware Company, to the fourth affirmative defense set out in said answer.

164.

The Court erred in sustaining the demurrer of the intervenor, J. T. Fulmele, to the first affirmative defense set out in said answer.

165.

The Court erred in sustaining the demurrer of the intervenor, J. T. Fulmele, to the second affirmative defense set out in said answer.

166.

The Court erred in sustaining the demurrer of the intervenor, J. T. Fulmele, to the third affirmative defense set out in said answer.

167.

The Court erred in sustaining the demurrer of the intervenor, J. T. Fulmele, to the fourth affirmative defense set out in said answer.

309

168.

The Court erred in sustaining the demurrer of the intervenor, John E. Good Metal Works to the first affirmative defense set out in said answer.

169.

The Court erred in sustaining the demurrer of the intervenor, John E. Good Metal Works, to the second affirmative defense set out in said answer.

170.

The Court erred in sustaining the demurrer of the intervenor, John E. Good Metal Works, to the third affirmative defense set out in said answer.

171.

The Court erred in sustaining the demurrer of the intervenor, John E. Good Metal Works, to the fourth affirmative defense set out in said answer.

172.

The Court erred in sustaining the demurrer of the intervenor, Charles H. Allmond & Company, to the first affirmative defense set out in said answer.

173.

The Court erred in sustaining the demurrer of the intervenor, Charles H. Allmond & Company, to the second affirmative defense set out in said answer.

174.

The Court erred in sustaining the demurrer of the intervenor, Charles H. Allmond & Company, to the third affirmative defense set out in said answer.

310

175.

The Court erred in sustaining the demurrer of the intervenor, Charles H. Allmond & Company, to the fourth affirmative defense set out in said answer.

176.

The Court erred in sustaining the demurrer of the intervenor, Puget Sound Pattern Works, to the first affirmative defense set out in said answer.

177.

The Court erred in sustaining the demurrer of the intervenor, Puget Sound Pattern Works, to the second affirmative defense set out in said answer.

178.

The Court erred in sustaining the demurrer of the intervenor, Puget Sound Pattern Works, to the third affirmative defense set out in said answer.

179.

The Court erred in sustaining the demurrer of the intervenor, Puget Sound Pattern Works, to the fourth affirmative defense set out in said answer.

180.

The Court erred in sustaining the demurrer of the intervenor, Davis & Buxbaum, to the first affirmative defense set out in said answer.

181.

311 The Court erred in sustaining the demurrer of the intervenor, Davis & Buxbaum, to the second affirmative defense set out in said answer.

182.

The Court erred in sustaining the demurrer of the intervenor, Davis & Buxbaum, to the third affirmative defense set out in said answer.

183.

The Court erred in sustaining the demurrer of the intervenor, Davis & Buxbaum, to the fourth affirmative defense set out in said answer.

184.

The Court erred in entering the order sustaining the demurrers of the plaintiff and the intervenors, Puget Sound Machinery Depot, The Marine Manufacturing and Supply Company, Sunde and Erland Company, Eyres Transfer Company, Bowles Company, S. B. Hicks & Sons Company, Bates & Clark Company, B. Manke, James Johnston, A. H. Holmstrom Iron Works, George Broom, Whiton Hardware Company, Frederick & Nelson, Washington Iron

Works Company, Eagle Brass Foundry, M. A. Bargar Company, Chesley Tow Boat Company, Lewis, Anderson, Ford Co., Inc., The Vulcan Iron Works, King & Winge, George B. Adair, Columbia Engineering Works, Meacham & Pinard, Dunham, Carrigan & Hayden Company, Olympic Foundry Company, Standard Boiler Works, Schwabacher Hardware Company, Eagle Iron Foundry, John E. Good Metal Works, Charles H. Allmond & Company, Puget Sound Pattern Works, Pacific Engineering Company and Davis & Buxbaum.

185.

The Court erred in making its fifth finding of fact.

186.

The Court erred in finding in the sixth subdivision of said finding that Charles H. Allmond & Company furnished material and did work upon said vessel.

187.

The Court erred in finding that the Chesley Tow Boat Company did work or furnished material upon the said vessel.

188.

The Court erred in finding that the Eyres Transfer Company did work or furnished material in the construction of the vessel named in said findings of fact.

189.

The Court erred in making its first conclusion of law.

190.

The Court erred in making its second conclusion of law.

191.

The Court erred in making its third conclusion of law.

313

192.

The Court erred in making its fourth conclusion of law.

193.

The Court erred in entering judgment in favor of said plaintiff and against said defendant for any sum whatsoever.

194.

The Court erred in rendering a judgment in favor of each of said intervenors.

195.

The Court erred in rendering judgment as shown by subdivisions 1 to 39 of said judgment, and erred in entering judgment as set out in each of said subdivisions.

196.

The Court erred in overruling the exceptions of this defendant to the cost bill of the above-entitled plaintiff as to the item for not allowing the said plaintiff \$10.00 as statutory attorney's fees.

197.

The Court erred in overruling the exceptions of this defendant to the cost bill of each of said intervenors and erred in allowing each of the said intervenors a statutory fee of \$10.00, and erred
314 in allowing more than one statutory attorney's fee of \$10.00 against this defendant.

GRAVES, PALMER, MURPHY,
*Attorneys for Defendant, Title Guaranty and
Trust Company of Scranton, Penna.*

[Endorsed:] Assignment of Errors. Filed in the U. S. Circuit Court, Western Dist. of Washington, Mar. 8, 1907. A. Reeves Ayres, Clerk. R. M. Hopkins, Dep.

In the United States Circuit Court of Appeals for the Ninth Circuit.

TITLE GUARANTY AND TRUST COMPANY OF SCRANTON, PENNSYLVANIA (a Corporation), Plaintiff in Error,

vs.

CRANE COMPANY (a Corporation), PUGET SOUND ENGINE WORKS, Incorporated (a Corporation), Olympic Foundry Company (a Corporation), The Marine Manufacturing and Supply Company (a Corporation), A. H. Holstrom, Doing Business as A. H. Holstrom Iron Works; Bowles Company (a Corporation), Sunde
315 and Erland Company (a Corporation), Puget Sound Machinery Depot (a Corporation), The Vulcan Iron Works (a Corporation), Pacific Engineering Company (a Corporation), S. B. Hicks & Sons' Company (a Corporation), George Broom; Whiton Hardware Company (a Corporation), Frederick & Nelson (a Corporation), Washington Iron Works Company (a Corporation), James Tracy and John Tracy, Copartners, Doing Business as The Eagle Brass Foundry; Chesley Tow Boat Company (a Corporation), T. J. Kidd and A. Winge, Copartners, Doing Business under the Name of King & Winge; James Johnston; L. W. Davis and J. H. Buxbaum, Copartners, Doing Business under the Firm Name of Davis & Buxbaum; Schwabacher Hardware Company (a Corporation), Gorham Rubber Company (a Corporation), B. D. Bates and R. O. Fraser, Copartners, Doing Business as Puget Sound Pattern Works; J. G. Meacham and W. J. Pinard, Copartners, Doing Business as Meacham & Pinard; Dunham,
316 Carrigan & Hayden Company (a Corporation), M. A. Bargar, Doing Business as M. A. Bargar & Company; Westernman Iron Works (a Corporation), F. J. Flairole and G. F. Barritt, Copartners, Doing Business as Standard Boiler Works; Charles H. Allmond and G. E. Ahlberg, Copartners, Doing Business as Charles

H. Allmond & Company; Columbia Engineering Works (a Corporation), John E. Good, Doing Business as John E. Good Metal Works; J. T. Fulmele, Doing Business under the Firm Name and Style of Eagle Iron Foundry; Lewis, Anderson, Ford Co., Incorporated (a Corporation), Eyres Transfer Company (a Corporation), F. R. Bates and T. S. Clark, Copartners, Doing Business under the Firm Name and Style of Bates & Clark Company; B. Manke, George B. Adair and Henry R. Worthington, Defendants in Error.

Writ of Error (Copy).

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the Circuit Court of the United States for the Western District of Washington, Greeting:

317 Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, or some of you, between Crane Company, a corporation, on relation of the United States, as plaintiff, and each of the above-entitled defendants in error, reference hereby being made to said title for the names of each thereof as defendants in error or intervenors on the one side, and the Title Guaranty and Trust Company of Scranton, Pennsylvania, the above-entitled plaintiff in error on the other side, which cause is numbered 1412 according to your method of numbering such causes, a manifest error hath happened to the great damage of the Title Guaranty and Trust Company of Scranton, Pennsylvania, a corporation, plaintiff in error, as by its complaint appears.

We, being willing that error, if any hath been, should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date hereof, in the said court, to be then and there held, that

318 the records and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct the error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 8th day of March, in the year of our Lord one thousand nine hundred and seven.

[SEAL.]

C. H. HANFORD, Judge.

Attest:

A. REEVES AYRES,

Clerk United States Circuit — for the Western District of Washington.

By R. M. HOPKINS, Deputy.

[Endorsed:] Writ of Error. Filed in the U. S. Circuit Court, Western Dist. of Washington, Mar. 8, 1907. A. Reeves Ayres, Clerk. R. M. Hopkins, Dep.

319 In the United States Circuit Court for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

320 PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and The Title Guaranty and Trust Company of Scranton, Pennsylvania (a Corporation), Defendants; Olympic Foundry Company (a Corporation), The Marine Manufacturing and Supply Company (a Corporation), A. H. Holmstrom, Doing Business as A. H. Holmstrom Iron Works; Bowles Company (a Corporation), Sunde and Erland Company (a Corporation), Puget Sound Machinery Depot (a Corporation), The Vulcan Iron Works (a Corporation), Pacific Engineering Company (a Corporation), S. B. Hicks & Sons Company (a Corporation), George Broom, Whiton Hardware Company (a Corporation), Frederick & Nelson (a Corporation), Washington Iron Works Company (a Corporation), James Tracy and John Tracy, Copartners, Doing Business as The Eagle Brass Foundry; Chesley Tow Boat Company (a Corporation), T. J. King and A. Winge, Copartners, Doing Business Under the Name of King & Winge; James Johnston, L. W. Davis, and J. H. Buxbaum, Copartners Doing Business Under the Firm Name of Davis & Buxbaum; Schwabacher Hardware Company (a Corporation), Gorham Rubber Company (a Corporation), B. D. Bates and R. O. Fraser, Copartners Doing Business as Puget Sound Pattern Works; J. G. Meacham and W. J. Pinard, Copartners, Doing Business as Meacham & Pinard; Dunham, Carrigan & Hayden Company (a Corporation), M. A. Barger, Doing Business as M. A. Bargar & Company; Westerman Iron Works (a Corporation), F. J. Flajole and G. F. Barritt, Copartners Doing Business as Standard Boiler Works; Charles H. Allmond and G. E. Ahlberg, Copartners Doing Business as Charles H. Allmond & Company; Columbia Engineering Works (a Corporation), John E. Good, Doing Business Under the Firm Name and Style of John E. Good Metal Works; J. T. Fulmele, Doing Business Under the Firm Name and Style of Eagle Iron Foundry; Lewis, Anderson, Ford Co., Inc. (a Corporation), Evres Transfer Company (a Corporation), F. R. Bates and T. S. Clark, Copartners, Doing Business Under the Firm Name and Style of Bates & Clark Company; E. Manke, George B. Adair, and Henry R. Worthington, Interveners.

Citation on Writ of Error (Copy).

UNITED STATES OF AMERICA,
Western District of Washington, ss:

The President of the United States to Crane Company (a Corporation), the Above-named Plaintiff; F. R. Bates and T. S. Clark, Copartners, Doing Business as Bates & Clark Company; B. Manke; James Johnston, Intervenor, and to H. T. Granger, Their Attorney; Pacific Engineering Company (a Corporation),
 322 Intervenor and to Kerr & McCord, Its Attorneys; Whiton Hardware Company (a Corporation); L. W. Davis and J. H. Buxbaum, Copartners, Doing Business Under the Firm Name and Style of Davis & Buxbaum, Intervenor, and to Wardell & Wardell, Their Attorneys; Lewis, Anderson, Ford Co., Inc. (a Corporation); Chesley Tow Boat Company, a Corporation, Intervenor, and to Allen, Allen & Stratton, Their Attorneys; The Marine Manufacturing & Supply Company (a Corporation); Eyres Transfer Company (a Corporation); Bowles Company (a Corporation); Sunde and Erland Company (a Corporation), Intervenor, and to McClure & McClure, Their Attorneys, Intervenor, and to Ira Bronson and D. B. Trefethen, Its Attorneys; The Vulcan Iron Works (a Corporation); T. J. King and A. Winge, Copartners, Doing Business Under the Name of King & Winge, Intervenor, and to Benton Embree, Their Attorney; George Broom, Intervenor, and to George H. King, His Attorney; Frederick & Nelson (a Corporation), Intervenor, and to Wright & Kelleher, Its Attorneys; S. B. Hicks & Sons Company (a Corporation), Intervenor, and to S. H. Steele, Its Attorney; A. H. Holmstrom, Doing Business as A. H. Holmstrom Iron Works, Intervenor, and to A. A. Anderson and Howard M. Hall, His
 323 Attorneys; James Tracy and John Tracy, Copartners, Doing Business as The Eagle Brass Foundry, Intervenor, and to E. H. Fleuck, Their Attorney; Washington Iron Works Company (a Corporation), Intervenor, and to Everett C. Ellis, Its Attorney; M. A. Bargar, Doing Business as M. A. Bargar & Company, Intervenor, and to Cutts & Dorety, His Attorney; Puget Sound Engine Works, Inc., Defendant, and Westerman Iron Works, a Corporation; Schwabacher Hardware Company (a Corporation); B. D. Bates and R. O. Fraser, Copartners, Doing Business Under the Firm Name and Style of Puget Sound Pattern Works; J. T. Fulmele, Doing Business Under the Firm Name and Style of Eagle Iron Foundry; J. G. Meacham and W. J. Pinard, Doing Business as Meacham & Pinard; George E. Adair; Columbia Engineering Works (a Corporation), John E. Good, Doing Business Under the Firm Name and Style of John E. Good Metal Works; F. J. Flajole and G. F. Barritt, Copartners, Doing Business as Standard Boiler Works; Charles H. Allmond and G. E. Ahlberg, Copartners, Doing Business as Charles H. Allmond & Company; Gorham Rubber Company (a Corporation), Olympic Foundry Company (a Corporation), Dunham, Carrigan & Hay-

324 den Company (a Corporation), Henry R. Worthington, Intervenor, and to Messrs. Gray & Stern, Their Attorneys, Greeting:

You and each of you are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be held in the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the Western District of Washington, Northern Division, wherein the Title Guaranty and Trust Company of Scranton, Pennsylvania, is plaintiff in error, and you and each of you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 8th day of March, 1907.

C. H. HANFORD,

United States District Court Judge, Presiding.

Attest:

[SEAL.]

A. REEVES AYRES, *Clerk.*

By R. M. HOPKINS, *Deputy.*

325 We hereby acknowledge due and legal service this 9th day of March, 1907, of the foregoing citation on writ of error.

H. T. GRANGER,

Attorney for Crane Co., Plaintiff, and Bates & Clark Co., B. Manke and Jame- Johnston, Intervenor.

KERR & McCORD,

Attorneys for Pacific Engineering Company, Intervenor.

WARDALL & WARDALL,

Attorneys for Whiton Hardware Co. and Davis & Buxbaum, Intervenor.

ALLEN, ALLEN & STRATTON,

Attorneys for Lewis, Anderson, Ford Co., Inc., and Chesley Tow Boat Co., Intervenor.

McCLURE & McCLURE,

Attorneys for The Marine Manufacturing & Supply Co., Eyres Transfer Co., Bowles Co., and Sunde & Erland Co., Intervenor.

IRA BRONSON &

D. B. TREFETHEN,

Attorneys for Puget Sound Machinery Depot, Intervenor.

BENTON EMBREE,

Attorney for The Vulcan Iron Works and King & Winge, Intervenor.

GEO. H. KING,

Attorney for George Broom, Intervenor.

WRIGHT & KELLEHER,

Attorneys for Frederick & Nelson, Intervenor.

S. H. STEELE,

Attorney for S. B. Hicks & Sons Co., Intervenor.

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A. A. ANDERSON,
Attorney for A. H. Holstrom Iron Works, Intervenor.
 FLUECK & BEBB,
Attorney for the Eagle Brass Foundry, Intervenor.
 EVERETT C. ELLIS,
Attorney for Washington Iron Works Co., Intervenor.
 CUTTS & DORETY,
Attorneys for M. A. Bargar & Company, Intervenor.
 GRAY & STERN,
Attorneys for Puget Sound Engine Works, Inc., Defendant, and Bates & Clark Co., Westerman Iron Works, Schwabacher Hardware Co., Puget Sound Pattern Works, Eagle Iron Foundry, Meachem & Pinard, George B. Adair, Columbia Engineering Works, John E. Good Metal Works, Standard Boiler Works, Chas. H. Allmond & Co., Gorham Rubber Co., Olympic Foundry Co., Dunham, Carrigan & Hayden Co., Henry L. Worthington, and all Other Parties.

[Endorsed:] Citation on Writ of Error. Filed in the
 327 U. S. Circuit Court, Western Dist. of Washington. Mar. 11, 1907. A. Reeves Ayres, Clerk. W. D. Covington, Dep.

In the Circuit Court of the United States, Western District of Washington, Northern Division.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company of Scranton, Penna. (a Corporation), Defendants; Olympic Foundry Company et al., Intervenor.

Stipulation for Diminution of Record on Writ of Error and Appeal.

It is mutually stipulated and agreed by and between the parties to the above-entitled action as follows:

I.

That the record may be reduced so as to exclude all pleadings, etc., in the above-entitled cause, save and except the following,
 328 and that the following shall constitute the record on review by writ of error and appeal in said cause, viz:

1. Complaint of Crane Company.
2. Notice to claimants to intervene and proof of service and publication thereof.
3. Complaint of intervention of Olympic Foundry Company.
4. Complaint of intervention of Eyres Transfer Company.
5. Complaint of intervention of Dunham, Carrigan & Hayden Company.

6. Demurrer of Title Guaranty and Trust Company to complaint of Crane Company.
7. Demurrer of Title Guaranty and Trust Company to complaint of intervention of Olympic Foundry Company.
8. Demurrer of Title Guaranty and Trust Company to complaint of intervention of Eyres Transfer Company.
9. Demurrer of Title Guaranty and Trust Company to complaint of intervention of Dunham, Carrigan & Hayden Company.
10. Order of Court overruling demurrers of Title Guaranty and Trust Company.
11. Answer of Title Guaranty and Trust Company to complaint of Crane Company.
12. Answer of Title Guaranty and Trust Company to complaint of intervenor Olympic Foundry Company.
- 329 13. Answer of Title Guaranty and Trust Company to complaint of intervention of Eyres Transfer Company.
14. Answer of Title Guaranty and Trust Company to complaint of intervention of Dunham, Carrigan & Hayden Company.
15. Demurrer of plaintiff to affirmative defense.
- 15½. Demurrer of Intervenor Olympic Foundry Co. to affirmative defenses.
16. Order sustaining demurrer to affirmative defenses.
17. Stipulation as to facts.
18. Notice and motion to submit cause for judgment.
19. Findings of fact and conclusions of law.
20. Judgment.
21. Exceptions to findings, conclusions and judgment, and order allowing.
22. Memo. of costs of Crane Company.
23. Memo. of costs of Olympic Foundry Company.
24. Memo. of costs of Dunham, Carrigan & Hayden Company.
25. Memo. of costs of Eyres Transfer Company.
26. Exceptions to cost bills.
27. Clerk's certificate of taxation of costs.
28. Order on review of taxation of costs and exception thereto.
29. Bill of exceptions of proceedings at trial.
- 330 30. Notice of application for order fixing amount of appeal bond.
31. Petition for appeal.
32. Order allowing appeal and fixing amount of cost of supersedeas bond.
33. Bond on appeal.
34. Assignment of errors.
35. Stipulation of record on appeal.
36. Citation and acknowledgment of service.
37. Amended citation on appeal and acknowledgment of service.
38. Petition for writ of error.
39. Order allowing writ of error and fixing amount of security.
40. Bond on writ of error.
41. Assignment of errors on writ of error.
42. Writ of error.
43. Citation on writ of error.
44. This stipulation.

II.

That the complaint of intervention of each of the intervenors whose complaint of intervention is not set out herein is substantially the same in form and substance as that of the Olympic Foundry Company, and that the demurrers interposed by the Title Guaranty and Trust Company to the other complaints of intervention are the same in substance and arrangement as that interposed to the
 331 complaint of said Olympic Foundry Company, and that the answer of the Title Guaranty and Trust Company to each of said complaints of intervention is the same in form and substance as its answer to the Olympic Foundry Company, and that each of said intervenors demurred to the affirmative defenses set out in said answer and that each of their demurrers is the same in form and substance as that of the Olympic Foundry Company, and that each of the said demurrers was sustained as shown by the order in the record. That ten dollars was taxed in favor of each of the claimants and against the Title Guaranty and Trust Company as statutory attorney fees, and that exceptions were filed to the same and the said item on appeal was allowed by the Court as a proper item of costs.

III.

That the same judgment should be entered in the case of each of the intervenors that is entered in regard to the claim of the Olympic Foundry Company, excepting as to the amounts which are shown in the statement of facts herein, excepting also so far as the facts of the individual cases are shown to be different by the statement of the stipulated facts.

Dated this 9th day of March, 1907.

H. T. GRANGER,

Attorneys for Crane Co., Bates & Clark Co.,

B. Manke and Jas. Johnston.

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KERR & McCORD,

Attorneys for Pacific Engineering Co.

WARDALL & WARDALL,

Attorneys for Whiton Hdw. Co. and

Davis & Burbaum.

ALLEN, ALLEN & STRATTON,

Attorneys for Lewis, Anderson Ford Co., Inc.,

and Chesley Tow Boat Co.

McCLURE & McCLURE,

Attorneys for the Marine Mfg. & Supply Co., Eyres

Transfer Co., Bowles Co. & Sunde & Erland Co.

IRA BRONSON AND

B. D. TREFETHEN,

Attorneys for Puget Sound Machinery Depot.

BENTON EMBREE,

Attorney for the Vulcan Iron Works and

King & Winge.

GEORGE H. KING,

Attorney for George Broom.

WRIGHT & KELLEHER,

Attorneys for Frederick & Nelson.

S. H. STEELE,

Attorney for S. B. Hicks & Sons Co.

A. A. ANDERSON,

Attorney for A. H. Holstrom Iron Works.

FLUECK & BEBB,

Attorneys for Eagle Brass Foundry.

EVERETT C. ELLIS,

Attorney for Washington Iron Works Co.

CUTTS & DORETY,

Attorneys for M. A. Bargar & Co.

GRAY & STERN,

Attorneys for the Westerman Iron Works, Puget Sound Pattern Works, Eagle Iron Foundry, Meacham & Pinard, George B. Adair, Columbia Engineering Works, John E. Good Metal Works, Standard Boiler Works, Chas. H. Allmond & Co., Gorham Rubber Co., Olympic Foundry Co., Dunham, Carrigan & Hayden Co., Henry R. Worthington, Puget Sound Engine Works, Inc., and for all Other Parties.

GRAVES, PALMER & MURPHY,

Attorneys for Title Guaranty and Trust Co.

of Scranton, Pennsylvania.

[Endorsed:] Stipulation for Diminution of Record. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 11, 1907. A. Reeves Ayres Clerk. W. D. Covington, Dep.

334 In the Circuit Court of the United States for the Western District of Washington, Northern Division.

UNITED STATES OF AMERICA, for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company of Scranton, Penn. (a Corporation), Defendants; Olympic Foundry Company et al., Intervenor.

Stipulation as to Certain Claims.

It is hereby stipulated and agreed that the complaints of intervention of M. A. Bargar & Company and of the Eagle Brass Foundry are different from the complaint in intervention of the Olympic Foundry Company, in that each of said intervenors M. A. Bargar & Company and Eagle Brass Foundry procured a certified copy of the contract and bond declared upon and alleged that fact in their complaints, and each of said complaints of intervention alleges

335 in addition to the allegations found in the Olympic Foundry Company's complaint in intervention that less than a year elapsed from the final completion of the work to the time of their

intervention, and that this stipulation shall be read in connection with the stipulation for the diminution of the record, and wherein consistent shall supersede the same.

Dated this 2d day of February, 1907.

CUTTS & DORETY,

Attorneys for M. A. Bargar & Co.

FLUECK & BEBB,

Attorneys for Eagle Brass Foundry.

GRAVES, PALMER & MURPHY,

Attorneys for Title Guaranty and Trust Company, of Scranton, Penna.

[Endorsed:] Stipulation as to Certain Claims. Filed in the U. S. Circuit Court, Western Dist. of Washington. Feb. 15, 1907. A. Reeves Ayres, Clerk. W. D. Covington, Dep.

335 In the Circuit Court of the United States, Western District of Washington, Northern Division.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company of Scranton, Penn. (a Corporation), Defendants; Olympic Foundry Company et al., Intervenor.

Stipulation as to Certain Claims.

It is hereby stipulated and agreed that the complaints of intervention of M. A. Bargar & Company and of the Eagle Brass Foundry are different from the complaint in intervention of the Olympic Foundry Company, in that each of said intervenors, M. A. Bargar & Company and Eagle Brass Foundry procured a certified copy of the contract and bond declared upon and alleges that fact in their complaints, and each of said complaints of intervention alleges in

337 addition to the allegations found in the Olympic Foundry's complaint in intervention that less than a year elapsed from the final completion of the work to the time of their intervention and that this stipulation shall be read in connection with the stipulation for the diminution of the record, and wherein they differ this stipulation shall control.

Dated this 9th day of March, 1907.

CUTTS & DORETY,

Attorneys for M. A. Bargar & Company.

FLUECK & BEBB,

Attorneys for Eagle Brass Foundry.

GRAVES, PALMER & MURPHY,

Attorneys for Title Guaranty and Trust Company of Scranton, Pennsylvania.

[Endorsed:] Stipulation as to Certain Claims. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 11, 1907. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

338 In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE Company (a Corporation), Plaintiff, Appellee and Defendant in Error,

vs.

PUGET SOUND ENGINE WORKS, INC. (a Corporation), and TITLE Guaranty and Trust Company of Scranton, Pennsylvania (a Corporation), Defendants, Appellants and Plaintiffs in Error; Olympic Foundry Company et al. Intervenor.

Clerk's Certificate to Record.

UNITED STATES OF AMERICA,

Western District of Washington, ss:

I, A. Reeves Ayres, Clerk of the Circuit Court of the United States for the Western District of Washington, do hereby certify the foregoing two hundred thirty-five (235) typewritten pages, 339 numbered from 1 to 235, inclusive, to be a full, true and correct copy of so much of the record and proceedings in the above and foregoing entitled cause, as, by the stipulations for diminution of record of parties on file and of record in said cause, a copy of which stipulations are included in the foregoing record, I am required to certify and transmit as the record on appeal from the Circuit Court of the United States for the Western District of Washington, and as the return to the annexed writ of error, to the United States Circuit Court of Appeals for the Ninth Circuit; and that the foregoing record constitutes the record of appeal and return to said annexed writ of error.

I further certify that the original of each of said papers, and proceedings now on file and of record in the office of the clerk of said Circuit Court at Seattle in said district.

I further certify that I annex hereto and herewith transmit the original citation, amended citation, writ of error and citation to writ of error.

I further certify that the cost of preparing and certifying the foregoing record on appeal and return to writ of error, is the sum of two hundred eleven and 50/100 (\$211.50) dollars, and that the said sum has been paid to me by Graves, Palmer & Murphy, attorneys and solicitors for defendants, appellants and plaintiffs in error.

340 In testimony whereof, I have hereunto set my hand and affixed my official seal, at Seattle, in said district, this 30th day of March, 1907.

[SEAL.]

A. REEVES AYRES, *Clerk,*
By R. M. HOPKINS,

Deputy Clerk.

In the United States Circuit Court for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

341 - PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and the Title Guaranty and Trust Company of Scranton, Pennsylvania (a Corporation), Defendants; Olympic Foundry Company (a Corporation), The Marine Manufacturing and Supply Company (a Corporation), A. H. Holmstrom Iron Works (a Corporation), Bowles & Company (a Corporation), Sunde & Erland (a Corporation), Puget Sound Machinery Depot (a Corporation), The Vulcan Iron Works (a Corporation), Pacific Engineering Works (a Corporation), S. B. Hicks & Sons Company (a Corporation), George Broom, Whiton Hardware Company (a Corporation), Frederick & Nelson (a Corporation), Washington Iron Works (a Corporation), Eagle Brass Foundry (a Corporation), Chesley Tow Boat Company (a Corporation), T. J. King and A. Winge, Copartners, Doing Business in the Name of King & Winge; James Johnston, L. W. Davis, Copartners, under the Firm Name and Style of Davis & Buxaum; Schwabacher Hardware Company (a Corporation), Gorham Rubber Company (a Corporation), B. D. Bates and R. O. Fraser, Copartners, Doing Business as Puget Sound Pattern Works & Westernman Iron Works (a Corporation), Appearing by Their Attorneys, Messrs. Gray & Stern; Meacham & Pinard, Dunham, Carrigan & Hayden Company (a Corporation), M. A. Bargar, Doing Business as M. A. Bargar & Company; F. J. Flajole and G. F. Barritt, Copartners, Doing Business as Standard Boiler Works; Charles H. Allmond & Company, Columbia Engineering Works (a Corporation), John E. Good Metal Works (a Corporation), George B. Adair, J. T. Fulmele, Doing Business as Eagle Iron Foundry; Lewis, Anderson, Ford Company (a Corporation), Eyres Transfer Company (a Corporation), F. R. Bates and T. S. Clark, Copartners, Doing Business under the Name and Style of Bates & Clark Company; B. Manke, H. R. Worthington, Intervenor.

Citation on Appeal (Original).

UNITED STATES OF AMERICA,
Western District of Washington, ss:

The President of the United States to Crane Company the Above-named Plaintiff; Bates & Clark Company, B. Manke, John Johnston, and H. T. Granger, Their Attorney; Pacific Engineering Company and Kerr & McCord, Its Attorneys; Davis & Buxbaum, Whiton Hardware Company and Wardell & War-

dell, Their Attorneys; Lewis Anderson Ford Company and Chesley Tow Boat Company and Allen & Allen & Stratton, Their Attorneys; Marine Manufacturing & Supply Company, Eyres Transfer Company, Sunde & Erland, Bowles & Company and McClure & McClure, Their Attorneys; Puget Sound Machinery Depot and Ira Bronson & D. B. Trefethner, Its Attorneys; The Vulcan Iron Works and King & Winge and Benton Embree, Their Attorney; George Broom and George H. King, His Attorney; Frederick & Nelson and Wright & Kelleher, Their Attorneys; S. B. Hicks & Sons Company and S. H. Steele, Their Attorney; A. H. Holmstrom Iron Works Company and A. A. Anderson and Hiward M. Hall, Their Attorneys; Eagle Brass Foundry and E. H. Fleuck, Its Attorney; Washington Iron Works and Everett C. Ellis, Its Attorney; M. A. Barger & Company and Cutts & Dorety, Their Attorneys; Schwabacher Hardware Company, Gorham Rubber Company, Puget Sound Pattern Works, Meacham & Pinard, Dunham, Carrigan & Hayden Company, Westernman Iron Works, Standard Boiler Works, Chas H. Allmond & Company, Columbia Engineering Works, John E. Good Metal Works, George B. Adair, Eagle Iron Foundry,
 344 Olympic Foundry Company, H. R. Worthington and Gray & Stern, Their Attorneys, Greeting:

You and each of you are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be held in the city of San Francisco, in the State of California, within thirty days from the date of this citation, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States for the Western District of Washington, Northern Division, wherein the Title Guaranty and Trust Company of Scranton, Pennsylvania, is appellant and you are respondents, and to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 21st day of February, 1907.

C. H. HANFORD,
United States District Court Judge
Presiding Over said Court.

Attest:

[SEAL.]

A. REEVES AYRES, *Clerk,*
 By W. D. COVINGTON, *Deputy.*

345 We hereby accept due and legal service this 21st day of February, 1907, of the foregoing citation:

H. T. GRANGER,
Attorney for Crane Company, Bates & Clark,
B. Manke, John Johnston.

KERR & McCORD,
Attorneys for Pacific Engineering Co.

WARDALL & WARDALL,
Attorneys for Davis & Buxbaum
and Whiton Hardware Co.

ALLEN, ALLEN & STRATTON,
*Attorneys for Lewis Anderson Ford Co.,
and Chesley Tow Boat Co.*

McCLURE & McCLURE,
*Attorneys for Marine Mfg. & Supply Co., Eyres
Transfer Co., Sunde & Erland, Bowles & Company.*

IRA BRONSON AND
D. B. TREFETHEN,
Attorneys for Puget Sound Machinery Depot.
BENTON EMBREE,

Attorney for Vulcan Iron Works and King & Winge.
GEO. H. KING AND M. H. VAN NUYS,
Attorneys for George Broom.

WRIGHT & KELLEHER,
Attorneys for Frederick & Nelson.

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S. H. STEELE,
Attorney for S. B. Hicks & Sons Co.

A. A. ANDERSON,
Attorney for A. H. Holmstrom Iron Works Co.
FLUECK & BEBB, E. A. G.,

Attorneys for Eagle Brass Foundry.

EVERETT C. ELLIS,

By D. V. H.,
Attorney for Washington Iron Works.

CUTTS & DORETY,
Attorneys for M. A. Barger & Company.

GRAY & STERN,
Attorneys for all Other Parties.

[Endorsed:] No. 1412. In the United States Circuit Court for the Western District of Washington, Northern Division. U. S. ex rel. Crane Co. vs. Puget Sound Engineering Works et al. Filed in the U. S. Circuit Court, Western Dist. of Washington. Feb. 23, 1907. A. Reeves Ayres, Clerk. W. D. Covington, Dep. Graves, Palmer & Murphy, Lowman Building, Seattle, Wash., Attorneys for Title Guaranty & Trust Co.

347 In the United States Circuit Court for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and The Title Guaranty and Trust Company of Scranton, Pennsylvania (a Corporation), Defendants; Olympic Foundry Company (a Corporation), The Marine Manufacturing and Supply Company, Doing Business as A. H. Holmstrom Iron Works; Bowles Company (a Corporation), Sunde and Erland Company (a Cor-

- poration), Puget Sound Machinery Depot (a Corporation), The Vulcan Iron Works (a Corporation), Pacific Engineering Company (a Corporation), S. B. Hicks & Sons Company (a Corporation), George Broom, Whiton Hardware Company (a Corporation), Frederick & Nelson (a Corporation), Washington Iron Works Company (a Corporation), James Tracy and John Tracy, Copartners, Doing Business as The Eagle Brass Foundry; Chesley Tow Boat Company (a Corporation), T. J. King and A. Winge, Copartners, Doing Business under the Name of King & Winge; James Johnston, L. W. Davis, and J. H. Buxbaum, Copartners, Doing Business under the Firm Name of Davis & Buxbaum; Schwabacher Hardware Company (a Corporation), Gorham Rubber Company (a Corporation), B. D. Bates and R. O. Fraser, Copartners, Doing Business as Puget Sound Pattern Works; J. G. Meacham and W. J. Pinard, Copartners, Doing Business as Meacham & Pinard; Dunham, Carrigan & Hayden Company (a Corporation), M. A. Bargar, Doing Business as M. A. Bargar & Company; Westerman Iron Works (a Corporation), F. J. Flajole and G. F. Barritt, Copartners, Doing Business as Standard Boiler Works; Charles H. Allmond and G. E. Ahlberg, Copartners, Doing Business as Charles H. Allmond & Company; Columbia Engineering Works (a Corporation), John E. Good, Doing Business under the Firm Name and Style of John E. Good Metal Works; J. T. Fulmele, Doing Business under the Firm Name and Style of Eagle Iron Foundry; Lewis, Anderson, Ford Co., Inc. (a Corporation), Eyres Transfer Company (a Corporation), F. R. Bates and T. S. Clark, Copartners, Doing Business under the Firm Name and Style of Bates & Clark Company; B. Manke, George B. Adair, and Henry R. Worthington, Intervenors.

Amended Citation on Appeal (Original).

UNITED STATES OF AMERICA,

Western District of Washington, ss:

The President of the United States to Crane Company, (a Corporation), the Above-named plaintiff; F. R. Bates and T. S. Clark, Copartners Doing Business as Bates & Clark Company; B. Manke; James Johnston, Intervenors, and to H. T. Granger, Their
 350 Attorney; Pacific Engineering Company (a Corporation), Intervenor, and to Kerr & McCord, Its Attorneys; Whiton Hardware Company, a Corporation; L. W. Davis and J. H. Buxbaum, Copartners Doing Business Under the Firm Name and Style of Davis & Buxbaum, Intervenors, and to Wardell & Wardell, Their Attorneys; Lewis, Anderson, Ford Co., Inc., a Corporation; Chesley Tow Boat Company, a Corporation, Intervenors, and to Allen, Allen & Stratton, Their Attorneys; The Marine Manufacturing & Supply Company, a Corporation; Eyres Transfer Company, a Corporation; Bowles Company, a Corporation; Sunde and Erland Company, a Corporation, Intervenors, and to McClure & McClure, Their Attorneys; Puget Sound Machinery Depot, a

Corporation, Intervenor, and to Ira Bronson and D. B. Trefethen, Its Attorneys; The Vulcan Iron Works, a Corporation; T. J. King and A. Winge, Copartners Doing Business Under the Name of King & Winge, Intervenor, and to Benton Embree, Their Attorney; George Broom, Intervenor, and to George H. King, His Attorney; Frederick & Nelson, a Corporation, Intervenor, and to Wright & Kelleher, Its Attorneys; S. B. Hicks & Sons Company, a Corporation, Intervenor, and to S. H. Steele, Its Attorney;

- 351 A. H. Holmstrom Doing Business as A. H. Holmstrom Iron Works, Intervenor, and to A. A. Anderson and Howard M. Hall, His Attorneys; James Tracy and John Tracy, Copartners Doing Business as The Eagle Brass Foundry, Intervenor, and to E. H. Fleuck, Their Attorney; Washington Iron Works Company, a Corporation, Intervenor, and to Everett C. Ellis, Its Attorney; M. A. Bargar Doing Business as M. A. Bargar & Company, Intervenor, and to Cutts & Dorety, His Attorneys; Westernman Iron Works, a Corporation; Schwabacher Hardware Company, a Corporation; B. D. Bates and R. O. Fraser, Copartners Doing Business Under the Firm Name and Style of Puget Sound Pattern Works; J. T. Fulmele Doing Business Under Firm Name and Style of Eagle Iron Foundry; J. G. Meacham and W. J. Pinard, Copartners Doing Business as Meacham & Pinard; George B. Adair; Columbia Engineering Works, a Corporation; John E. Good, Doing Business as John E. Good Metal Works; F. J. Flajole and C. F. Barritt, Copartners Doing Business as Standard Boiler Works; Charles H. Allmond and G. E. Ahlberg, Copartners Doing Business as Charles H. Allmond & Company; Gorham Rubber Company, a Corporation; Olympic Foundry Company, a Corporation;
- 352 Dunham, Carrigan & Hayden Company, a Corporation; Henry Worthington, Intervenor; Puget Sound Engine Works, Inc., Defendant, and to Messrs. Gray & Stern, Their Attorneys, Greeting:

You and each of you are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be held in the city of San Francisco, in the State of California, within thirty days from the date of this citation, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States for the Western District of Washington, Northern Division, wherein the Title Guaranty and Trust Company of Scranton, Pennsylvania, is appellant and you are respondents, and to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 8th day of March, 1907.

C. H. HANFORD,

United States District Court Judge.

Presiding Over Said Court.

Attest:

[SEAL.]

A. REEVES AYRES, *Clerk.*

By R. M. HOPKINS, *Deputy.*

353 We hereby acknowledge due and legal service this 9th day of March, 1907, of the foregoing amended citation of appeal:

H. T. GRANGER,

Attorney for Crane Co., Plaintiff, and Bates & Clark Co., B. Manke, and James Johnston, Intervenor.

KERR & McCORD,

Attorneys for Pacific Engineering Company, Intervenor.

WARDALL & WARDALL,

Attorneys for Whiton Hardware Co. and Davis & Buxbaum, Intervenor.

ALLEN, ALLEN & STRATTON,

Attorneys for Lewis, Anderson, Ford Co., Inc., & Chesley Tow Boat Co., Intervenor.

McCLURE & McCLURE,

Attorneys for The Marine Manufacturing & Supply Co., Eyres Transfer Co., Bowles Co., and Sunde & Erland Co., Intervenor.

IRA BRONSON AND

D. B. TREFETHEN,

Attorneys for Puget Sound Machinery Depot, Intervenor.

BENTON EMBREE,

Attorney for The Vulcan Iron Works and King & Winge, Intervenor.

GEO. F. KING,

Attorney for George Broom, Intervenor.

WRIGHT & KELLEHER,

Attorneys for Frederick & Nelson, Intervenor.

S. H. STEELE,

Attorney for S. B. Hicks & Sons Co., Intervenor.

A. A. ANDERSON,

Attorney for A. H. Holmstrom Iron Works, Intervenor.

FLUECK & BEBB,

Attorneys for The Eagle Brass Foundry, Intervenor.

EVERETT C. ELLIS,

Attorney for Washington Iron Works Co., Intervenor.

CUTTS & DORETY,

Attorneys for M. A. Bargar & Company, Intervenor.

GRAY & STERN,

Attorneys for Puget Sound Engine Works, Inc., and Westerman Iron Works, Schwabacher Hardware Co., Puget Sound Pattern Works, Eagle Iron Foundry, Meacham & Pinard, George B. Adair, Columbia Engineering Works, John E. Good Metal Works, Standard Boiler Works, Charles H. Allmond & Company, Gorham Rubber Company, Olympic Foundry Co., Dunham, Carrigan & Hayden Co., Henry R. Worthington, Intervenor, and to All Other Parties.

355 [Endorsed:] No. 1412. In the United States Circuit Court for the Western District of Washington, Northern Division. United States ex rel. Crane Co., a Corporation vs. Puget Sound Engine Works, Inc., a Corporation, and Title Guaranty & Trust Co. of Scranton, Penna. a Corporation, et al. Amended Citation on Appeal. Filed in the U. S. Circuit Court Western Dist. of Washington. Mar. 11, 1907. A. Reeves Ayres, Clerk. W. D. Covington, Dep. Graves, Palmer & Murphy, Seattle, Wash., Attorneys for Title Guaranty and Trust Company.

In the United States Circuit Court of Appeals for the Ninth Circuit.

TITLE GUARANTY AND TRUST COMPANY OF SCRANTON, PENNSYLVANIA (a Corporation), Plaintiff in Error,

vs.

CRANE COMPANY (a Corporation), PUGET SOUND ENGINE WORKS, Incorporated (a Corporation), Olympic Foundry Company (a Corporation), The Marine Manufacturing and Supply Company (a Corporation), A. H. Holmstrom, Doing Business as A. H. Holmstrom Iron Works, Bowles Company (a Corporation),
 356 Sunde and Erland Company (a Corporation), Puget Sound Machinery Depot (a Corporation), The Vulcan Iron Works (a Corporation), Pacific Engineering Company (a Corporation), S. B. Hicks & Sons Company (a Corporation), George Broom, Whiton Hardware Company (a Corporation), Frederick Nelson (a Corporation), Washington Iron Works Company (a Corporation), James Tracy and John Tracy, Copartners, Doing Business as The Eagle Brass Foundry; Chesley Tow Boat Company (a Corporation), T. J. King and A. Winge, Copartners, Doing Business Under the Name of King & Winge.; James Johnston, L. W. Davis, and J. H. Buxbaum, Copartners, Doing Business Under the Firm Name of Davis & Buxbaum; Schwabacher Hardware Company (a Corporation), Gorham Rubber Company (a Corporation), B. D. Bates and R. O. Fraser, Copartners, Doing Business as Puget Sound Pattern Works; J. G. Meacham and W. J. Pinard, Copartners, Doing Business as
 357 Meacham & Pinard; Dunham, Carrigan & Hayden Company (a Corporation), M. A. Bargar, Doing Business as M. A. Bargar & Company; Westerman Iron Works (a Corporation), F. J. Flajole and G. F. Barritt, Copartners, Doing Business as Standard Boiler Works; Charles H. Allmond and G. E. Ahlberg, Copartners, Doing Business as Charles H. Allmond & Company, Columbia Engineering Works (a Corporation), John E. Good, Doing Business as John E. Good Metal Works; J. T. Fulmele, Doing Business Under the Firm Name and Style of Eagle Iron Foundry; Lewis, Anderson, Ford Co., Inc. (a Corporation), Eyres Transfer Company (a Corporation), F. R. Bates and T. S. Clark, Copartners, Doing Business Under the Firm Name and Style of Bates & Clark Company; B. Manke, George B. Adair, and Henry R. Worthington, Defendants in Error.

Writ of Error (Original).

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges
of the Circuit Court of the United States for the Western
358 District of Washington, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, or some of you, between Crane Company, a corporation, on relation of the United States, as plaintiff, and each of the above-entitled defendants in error, reference hereby being made to said title for the names of each thereof as defendants in error or intervenors on the one side, and the Title Guaranty and Trust Company of Scranton, Pennsylvania, the above-entitled plaintiff in error on the other side, which cause is numbered 1412 according to your method of numbering such causes, a manifest error hath happened to the great damage of the Title Guaranty and Trust Company of Scranton, Pennsylvania, a corporation, plaintiff in error, as by its complaint appears.

We, being willing that error, if any hath been, should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San

Francisco, in the State of California, within thirty days
359 from the date hereof, in the said court, to be then and there

held, that the records and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct the error, what of right and according to the laws and customs of the United States should to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 8th day of March, in the year of our Lord one thousand nine hundred and seven.

C. H. HANFORD, *Judge.*

Attest:

[SEAL.]

A. REEVES AYRES,

*Clerk United States Circuit Court for the
Western District of Washington.*

By R. M. HOPKINS, *Deputy.*

[Endorsed:] No. 1412. In the United States Circuit Court of Appeals. For the Western District of Washington, Ninth Circuit — Division. Title Guaranty & Trust Co. of Scranton, Penna., a corporation, Plaintiff in Error, vs. Crane Co., a corporation, et al., Defendants in Error. Writ of Error. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 8, 1907. A. Reeves Ayres, Clerk. R. M. Hopkins, Dep. Graves, Palmer & Murphy,
360 Seattle, Wash., Attorneys for Title Guaranty & Trust Company.

In the United States Circuit Court for the Western District of Washington, Northern Division.

No. 1412.

UNITED STATES OF AMERICA for the Use and Benefit of CRANE COMPANY (a Corporation), Plaintiff,

vs.

361 PUGET SOUND ENGINE WORKS, INCORPORATED (a Corporation), and ~~The Title Guaranty and Trust Company of Scranton, Pennsylvania~~ (a Corporation), Defendants; Olympic Foundry Company (a Corporation), The Marine Manufacturing & Supply Company (a Corporation), A. H. Holstrom, Doing Business as A. H. Holstrom Iron Works; Bowles Company (a Corporation), Sunde and Erland Company (a Corporation), Puget Sound Machinery Depot (a Corporation), The Vulcan Iron Works (a Corporation), Pacific Engineering Company (a Corporation), S. B. Hicks and Sons Company (a Corporation), George Broom, Whiton Hardware Company (a Corporation), Frederick & Nelson (a Corporation), Washington Iron Works Company (a Corporation), James Tracy and John Tracy, Copartners, Doing Business as The Eagle Brass Foundry; Chesley Tow Boat Company (a Corporation), T. J. King and A. Winge, Copartners, Doing Business Under the Name of King & Winge; James Johnston, L. W. Davis and J. H. Buxbaum, Copartners, Doing Business Under the Firm Name of Davis & Buxbaum, Schwabacher Hardware Company (a Corporation), Gorham Rubber Company (a Corporation), B. D. Bates and R. O. Fraser, Copartners, Doing Business as Puget Sound Pattern Works; J. G. Meacham and W. J. Pinard, Copartners, Doing Business as Meacham & Pinard, Dunham, Carigan & Hayden Company (a Corporation), M. A. Barger, Doing Business as M. A. Barger & Company; Westernman Iron Works (a Corporation), F. J. Flajole and G. F. Barritt, Copartners, Doing Business as Standard Boiler Works; Charles H. Allmond and G. E. Ahlberg, Copartners, Doing Business as Charles H. Allmond & Company, Columbia Engineering Works (a Corporation), John E. Good, Doing Business Under the Firm Name and Style of John E. Good Metal Works; J. T. Fullemele, Doing Business Under the Firm Name and Style of Eagle Iron Foundry; Lewis, Anderson, Ford Co., Inc. (a Corporation), Eyres Transfer Company (a Corporation), F. R. Bates and T. S. Clark, Copartners, Doing Business Under the Firm Name and Style of Bates & Clark Company; B. Manke, George B. Adair, and Henry R. Worthington, Intervenor.

Citation on Writ of Error (Original).

UNITED STATES OF AMERICA,

Western District of Washington, ss:

The President of the United States to Crane Company (a Corporation), the above-named plaintiff; F. R. Bates and T. S. Clark,

- copartners, Doing Business as Bates & Clark Company; B. Manke; James Johnston, Intervenor, and to H. T. Granger, Their Attorney; Pacific Engineering Company (a Corporation), Intervenor and to Kerr & McCord, Its Attorneys; Whiton Hardware Company (a Corporation); L. W. Davis and J. H. Buxbaum, Copartners Doing Business Under the Firm Name and Style of Davis & Buxbaum, Intervenor, and to Wardell & Wardell, Their Attorneys; Lewis, Anderson, Ford Co., Inc. (a Corporation); Chesley Tow Boat Company (a Corporation), Intervenor; and to Allen, Allen & Stratton, Their Attorneys; The Marine Manufacturing & Supply Company (a Corporation); Eyres Transfer Company (a Corporation); Bowles Company (a Corporation); Sunde and Erland Company (a Corporation), Intervenor; and to McClure & McClure, Their Attorneys; Puget Sound Machinery Depot (a Corporation), Intervenor, and to Ira Bronson and D. B. Trefethen, Its Attorneys; The Vulcan Iron Works (a Corporation); T. J. King and A. Winge, Copartners Doing Business Under the Name of King & Winge, Intervenor, and to Benton Embree, Their Attorney; George Broom, Intervenor; and to George H. King, His Attorney; Frederick & Nelson (a Corporation), Intervenor, and to Wright & Kelleher, Its Attorneys; S. B. Hicks & Sons Company (a Corporation), Intervenor, and to S. H. Steele, Its Attorney; A. H. Holmstrom, Doing Business as A. H. Holmstrom Iron Works, Intervenor, and to A. A. Anderson and Howard M. Hall, His Attorneys; James Tracy and John Tracy, Copartners Doing Business as The Eagle Brass Foundry, Intervenor, and to E. H. Fleuck, Their Attorney; Washington Iron Works Company (a Corporation), Intervenor, and to Everett C. Ellis, Its Attorney; M. A. Bargar, Doing Business as M. A. Bargar & Company, Intervenor, and to Cutts & Dorety, His Attorneys; Puget Sound Engine Works, Inc., Defendant, and Westerman Iron Works (a Corporation); Schwabacher Hardware Company (a Corporation); B. D. Bates and R. O. Fraser, Copartners Doing Business Under the Firm Name and Style of Puget Sound Pattern Works; J. T. Fulmele Doing Business Under the Firm Name and Style of Eagle Iron Foundry; J. G. Meacham and W. J. Pinard Doing Business as Meacham & Pinard; George B. Adair; Columbia Engineering Works (a Corporation); John E. Good, Doing Business Under the Firm Name and Style of John E. Good Metal Works; F. J. Flajole and G. F. Barritt, Copartners Doing Business as Standard Boiler Works; Charles H. Allmond and G. E. Ahlberg, Copartners Doing Business as Charles H. Allmond & Company; Gorham Rubber Company (a Corporation); Olympic Foundry Company (a Corporation); Dunham, Carrigan & Hayden Company (a Corporation); Henry R. Worthington, Intervenor, and to Messrs. Gray & Stern, Their Attorneys, Greeting:

You and each of you are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant

to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the Western District of Washington, Northern Division, wherein the Title Guaranty and Trust Company of Scranton, Pennsylvania, is plaintiff in error, and you and each of you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 8th day of March, 1907.

C. H. HANFORD,

United States District Court Judge, Presiding.

Attest:

[SEAL.]

A. REEVES AYRES, *Clerk.*

By R. M. HOPKINS, *Deputy.*

366 We hereby acknowledge due and legal service this 9th day of March, 1907, of the foregoing citation on writ of error.

H. T. GRANGER,

Attorney for Crane Co., Plaintiff, and Bates & Clark Co.,

B. Manke, and James Johnston, Intervenor.

KERR & McCORD,

Attorneys for Pacific Engineering Company, Intervenor.

WARDALL & WARDALL,

Attorneys for Whiton Hardware Co. and

Davis & Burbaum, Intervenor.

ALLEN, ALLEN & STRATTON,

Attorneys for Lewis, Anderson, Ford Co., Inc., &

Chesley Tow Boat Co., Intervenor.

McCLURE & McCLURE,

Attorneys for The Marine Manufacturing & Supply Co.,

Eyres Transfer Co., Bowles Co., and Sunde & Erland

Co., Intervenor.

IRA BRONSON AND

D. B. TREFETHEN,

Attorneys for Puget Sound Machinery Depot, Intervenor.

BENTON EMBREE,

Attorney for the Vulcan Iron Works and

King & Winge, Intervenor.

367

GEO. H. KING,

Attorney for George Broom, Intervenor.

WRIGHT & KELLEHER,

Attorneys for Frederick & Nelson, Intervenor.

S. H. STEELE,

Attorney for S. B. Hicks & Sons Co., Intervenor.

A. A. ANDERSON,

Attorney for A. H. Holmstrom Iron Works, Intervenor.

FLUECK & BEBB,

Attorneys for The Eagle Brass Foundry, Intervenor.

EVERETT C. ELLIS,

Attorney for Washington Iron Works Co., Intervenor.

CUTTS & DORETY,
Attorneys for M. A. Bargar & Company, Intervenor.
 GRAY & STERN,
Attorneys for Puget Sound Engine Works, Inc., Defendant, and Bates & Clark Co., Westerman Iron Works, Schwabacher Hardware Co., Puget Sound Pattern Works, Eagle Iron Foundry, Meachem & Pinard, George B. Adair, Columbia Engineering Works, John E. Good Metal Works, Standard Boiler Works, Chas. H. Almond & Co., Gorham Rubber Co., Olympic Foundry Co., Dunham, Carrigan & Hayden Co., Henry L. Worthington, and All Other Parties.

368 [Endorsed:] No. 1412. In the United States Circuit Court for the Western District of Washington, Northern Division. United States ex rel. Crane Company (a Corporation), vs. Puget Sound Engine Works, Inc. (a Corporation), and Title Guaranty & Trust Co. of Scranton, Penna., et al. Citation on Writ of Error. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 11, 1907. A. Reeves Ayres, Clerk. W. D. Covington, Dep. Graves, Palmer & Murphy, Seattle, Wash., Attorneys for Title Guaranty & Trust Company.

[Endorsed:] No. 1451. United States Circuit Court of Appeals for the Ninth Circuit. The Title Guaranty and Trust Company of Scranton, Pennsylvania, Appellant and Plaintiff in Error, vs. The Crane Company (a Corporation), et al., Appellees and Defendants in Error. Transcript of Record. Upon Appeal from and Upon Writ of Error to the United States Circuit Court for the Western District of Washington, Northern Division. Filed April 5, 1907. F. D. Monckton, Clerk.

369 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1451.

THE TITLE GUARANTY AND TRUST COMPANY OF SCRANTON, PENNSYLVANIA, Appellant and Plaintiff in Error,

vs.

THE CRANE COMPANY (a Corporation) et al., Appellees and Defendants in Error.

Certificate of Clerk U. S. Circuit Court of Appeals to Printed Transcript of Record.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing three hundred and sixty-eight (368) pages, numbered from one (1) to three hundred and sixty-eight (368), both inclusive, to be a true copy of the printed transcript of Record upon Appeal from and Writ of Error to the United States Circuit Court for the Western District of Washington, Northern Division, in the above-entitled

case as the original and copies thereof were printed under my supervision pursuant to the provisions of rule 23 of the rules of practice of the said the United States Circuit Court of Appeals for the Ninth Circuit and as the said original remains on file and of record in my office.

370 Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this twenty-fifth day of August, A. D. 1908.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
*Clerk U. S. Circuit Court of Appeals
for the Ninth Circuit.*

371 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1451.

THE TITLE GUARANTY AND TRUST COMPANY OF SCRANTON, PENNSYLVANIA, Appellant and Plaintiff in Error,

vs.

THE CRANE COMPANY (a Corporation) et al., Appellees and Defendants in Error.

Addenda.

Proceedings Had in the United States Circuit Court of Appeals for the Ninth Circuit.

372 At a Stated Term, to wit: the October Term, A. D. 1906, of the United States Circuit Court of Appeal^d for the Ninth Circuit, Held at the Court Room, in the City and County of San Francisco, on Thursday, the Sixth Day of June, in the Year of our Lord One Thousand Nine Hundred and Seven.

Present:

The Honorable William B. Gilbert, Circuit Judge.

Honorable John J. De Haven, District Judge.

Honorable William H. Hunt, District Judge.

No. 1451.

THE TITLE GUARANTY & TRUST COMPANY OF SCRANTON, PENNSYLVANIA, Appellant and Plaintiff in Error,

vs.

THE CRANE COMPANY, a Corporation, et al., Appellees and Defendants in Error.

Order of Submission.

Ordered, above-entitled cause, upon the appeal and upon the return to the writ of error therein, argued by Mr. J. B. Murphy, counsel for the appellant and plaintiff in error, and Mr. H. T. Grainger, counsel for the appellees and defendants in error, and submitted to the Court for consideration and decision.

373 In the United States Circuit Court of Appeals for the Ninth Circuit.

THE TITLE GUARANTY & TRUST COMPANY OF SCRANTON, PENNSYLVANIA, a Corporation, Appellant and Plaintiff in Error,

vs.

374 PUGET SOUND ENGINE WORKS, a Corporation; CRANE COMPANY, a Corporation; Olympic Foundry Company, a Corporation; The Marine Manufacturing & Supply Company, a Corporation; The Vulcan Iron Works, a Corporation; A. H. Holstrom, doing business as A. H. Holstrom Iron Works; Bowless Company, a Corporation; Puget Sound Machinery Depot, a Corporation; S. B. Hicks & Sons Company, a Corporation; George Broom; Whiton Hardware Company, a Corporation; Frederick & Nelson, a Corporation; Washington Iron Works, a Corporation; James Tracy, and John Tracy, Co-partners, doing business as The Eagle Brass Foundry; Chesley Tow Boat Company, a Corporation; T. J. King and A. Winge, Co-partners, doing business under the name of King & Winge; James Johnston; L. W. Davies and J. H. Buxbaum, Co-partners, doing business under the name and style of Davis & Buxbaum; Schwabacher Hardware Company, a Corporation; Gorham Rubber Company, a Corporation; Pacific Engineering Company, a Corporation; Sunde & Erland Company, a Corporation; B. D. Bates and R. O. Fraser, Co-partners, doing business under the firm name and style of Puget Sound Pattern Works; J. G. Meacham and W. J. Pinard, Co-partners, doing business as Meacham & Pinard; Dunham, Carrigan & Hayden Company, a Corporation; M. A. Bargar, doing business as M. A. Bargar & Company; Westernman Iron Works, a Corporation; F. J. Flajole and G. F. Barritt, Co-partners, doing business as Standard Boiler Works; Charles H. Allmond and G. E. Ahlberg, Co-partners as Charles H. Allmond & Company; Columbia Engineering Works, a Corporation; John E. Good, doing business under the firm name and style of John E. Good Metal Works; J. F. Fumele, doing business under the firm name and style of Eagle Iron Foundry; Lewis, Anderson, Ford Co., Inc., a Corporation; Eyres Transfer Company, a Corporation; F. R. Bates and T. S. Clark, Co-partners, doing business under the firm name and style of Bates & Clark Company; B. Manke; George B. Adair and Henry R. Worthington, Appellees and Defendants in Error.

375 *Opinion U. S. Circuit Court of Appeals.*

Upon Appeal From and Upon Writ of Error to the United States Circuit Court for the Western District of Washington, Northern Division.

This action was brought in the circuit court for the western district of Washington in the name of United States of America, for the use and benefit of Crane Company, a corporation, plaintiff,

v. Puget Sound Engine Works, incorporated, and The Title Guaranty & Trust Company, of Scranton, Pennsylvania, a corporation defendants.

The substance of the complainant is that about February 17, 1905, the Puget Sound Engine Works made a written contract with Captain Grant, of the United States Army, acting for and in behalf of the United States of America, whereby the Puget Sound Engine Works agreed to furnish all the material and labor required for, and to construct and deliver to the United States, free from incumbrances, a steamer with engine, boiler, apparel, furniture, etc., in accordance with certain specifications made and furnished, the steamer to be known as the Lieutenant Harris. It is alleged that in compliance with the law, the Puget Sound Engine Works and The Title Guaranty & Trust Company executed and delivered to the United States, through Captain Grant, their certain bond, wherein it was agreed that the Puget Sound Engine Works should fully perform the covenants, agreements and conditions contained in the contract for the construction of the steamer, and agreed and
376 provided that the Puget Sound Engine Works should promptly make all payments to persons supplying it with labor and material in the performance of the work provided for in the contract; that the bond was executed and delivered on February 27, 1905; that between June 3rd and September 15th, 1905, the Crane Company, at the special instance and request of the Puget Sound Engine Works, furnished and delivered to the Puget Sound Engine Works certain goods, wares and material for use, and which was used, in the construction of the steamer. It is alleged that the construction work was completed on September 22, 1905, and that no action has been brought on the bond by the United States, and that more than six months have elapsed since the final completion of the work of construction upon the steamer, as provided for in the contract. Judgment is asked against the defendants and each of them for \$1,194.88.

Thereafter the Olympic Foundry Company intervened, and alleged, substantially, that between May 2nd and September 2nd, 1905, at the special instance and request of the Puget Sound Engine Works, it had furnished and delivered to the said Puget Sound Engine Works certain material, which was used by the Puget Sound Engine Works in the construction of the steamer Harris. Judgment was asked against the defendants and each of them in the sum of
\$771.04.

377 Complaint in intervention was also filed by Eyres Transfer Company, its claim being for services in the way of cartage of material to the steamer Harris, and for payment of certain sums for freight upon material to be used in the construction of said steamer, and which was carted to the said steamer. Judgment was asked against the defendants, and each of them, in the sum of \$89.34.

Complaint in intervention was also filed by Dunham, Carrigan & Hayden Company, a corporation. Said company alleged that it had furnished merchandise and material used in the construction

of the steamer. Judgment was prayed for in the sum of \$80.20 upon one cause of action, and \$223.45 upon another.

The defendant Title Guaranty & Trust Company demurred to the complaint of the Crane Company, and to the several complaints in intervention, upon the ground that it did not appear from the face of the complaint that all claims against the bond in favor of the United States had been paid; because it did not appear from the face of the complaint that before the commencement of the suit, plaintiff applied for or secured a certified copy of the bond or undertaking declared upon, and because the action was not predicated upon a certified copy of said obligation; because the United States was not made a party defendant, and because the material and service, the price of which is sought to be recovered, were not such as
378 come within the class of material and service provided for by statute governing and defining such a bond as is declared upon; and because the statute does not contemplate construction of a vessel.

There were a number of other complaints in intervention filed, and in order to facilitate proceedings, a stipulation was entered into, whereby such complaints in intervention should be brought before this court as would exemplify the record in respect to the various points presented, and providing that any judgment which may be entered shall be entered as to all claims, except insofar as any such judgments may be distinguished by individual features.

The demurrers of the appellant, Title Guaranty & Trust Company, to the complaint of the Crane Company, and to each of the complaints in intervention, were overruled. The Title Guaranty & Trust Company answered. It admitted that it executed, as surety, to the United States a certain bond, whereby it agreed that the Puget Sound Engine Works should fulfill the conditions contained in the contract for the construction of the steamer Harris, and that the bond was further conditioned for the full payment by the Puget Sound Engine Works to all persons supplying labor or materials for the prosecution of the work provided for in said contract. It denied any indebtedness and affirmatively
379 set forth the contract between Captain Grant, for the United States, and the Puget Sound Engine Works. Omitting the more formal parts, the contract is substantially as follows:

Article I provided that the Puget Sound Engine Works should furnish all the material and labor required, and should construct, complete and deliver to the United States, free from incumbrance, a wooden steamer, with engines, machinery, apparel, furniture, etc., as specified and described in the specifications attached to and made part of the contract.

Article II provided that full access to the vessel, while under construction, and full facilities for examination of labor and material, should be given to the inspectors appointed by the United States to supervise the work, and that such tests of material as might be deemed necessary should be made at the expense of the Puget Sound Engine Works, under the supervision of such inspectors, and before

receiving the finish coat of paint, the vessel should be tested, in order to satisfy the United States.

Article III provided that in consideration of the faithful performance of the agreement, the contractor should be paid for the completed vessel, according to plans and specifications, \$24,886.00. Payments were to be made as the work progressed, provided that, in the opinion of the officer in charge, the work progressed satisfactorily, one-fourth the amount, less twenty per cent of the same, when the labor and material furnished should equal twenty-five per cent of the total; a second payment of fifteen per cent
380 of the amount, less twenty per cent of the same, when the labor and material furnished should equal forty per cent of the total. Third and fourth payments upon percentage plans were provided for, less ten per cent on the total amount, which was reserved to be paid sixty days after date of delivery and acceptance of the vessel, provided no defects, due to inferior material or bad workmanship, should be detected or developed.

Article IV provided that the portion of the vessel completed and paid for under said method of partial payments "should become the property of the United States, but the party of the second part shall be responsible for the proper care of such portion of the vessel so paid for until the final delivery to, and acceptance by, the United States, as more particularly specified in paragraph 15, at page 6, of said specifications."

Article V provided that the vessel should be satisfactorily completed by July 15, 1905, and for liquidated damages for time consumed in excess of that time.

Article VI required the work to be commenced by February 18, 1905.

Article VII provided that the builder should be paid at the quartermaster's office at Seattle for the vessel completed, as specified, \$24,886.00.

381 Article VIII provided that in case of failure of the builder to comply with the contract, the United States should have the power to complete the work at the expense of the builder in such manner as the United States should deem best for the interest of the public service, either by days labor, or open market purchase, or contract, or both, and any excess of cost resulting from such failure should be charged to the contract.

The defendant also pleaded the execution and delivery of the bond. By the terms of the bond, the Puget Sound Engine Works and The Title Guaranty & Trust Company were held unto the United States in the penal sum of ten thousand dollars. The condition of the obligation was such that if the Puget Sound Engine Works should in all respects perform the conditions and agreements agreed upon by the Puget Sound Engine Works to be observed and performed in the contract for the construction of the vessel, and should promptly make full payment to all persons supplying it labor and material in the prosecution of the work provided for in the contract, then the obligation should be void; otherwise, should be in full force and effect.

The defendant further pleaded that the bond was executed and accepted by the United States for its sole benefit and protection, and that the execution was without any consideration as to any party furnishing labor or material to the Puget Sound Engine Works, to be used, or which was used, in the construction of the vessel, 382 and that the bond was without consideration and without authority of law as to the complainant and the intervenors, and each of them, and was without consideration as to the United States; that the complainant and each of the intervenors is asserting a claim under the provisions of an act of Congress of August 13, 1894, entitled an act for the protection of persons furnishing material and labor for the construction of Public Works, (Vol. 28 Statutes of the United States 278, and the amendment to said act, made February 24, 1905, (Vol. 33, United States General Statutes, 811), and that the provision of said act and amendment refer to the construction of structures built entirely upon soil belonging to the United States, and have no application to the construction of vessels or the making or completing of chattels.

The Title Guaranty & Trust Company also set forth that under the laws of the State of Washington, any person who furnished material in the construction of a vessel in the state has a lien, and that whatever labor or material was furnished to the Puget Sound Engine Works by the intervenors for use in the said vessel was furnished and became a part of the said vessel, when the same belonged to the Puget Sound Engine Works, and before the same became the property of the United States; that the complainant neglected to enforce its lien against the vessel and suffered the security for the payment of the claim to be lost; and that by reason of negligence and 383 delay, there has been lost to this defendant all security to which it would be lawfully entitled upon the payment to the said complainant and intervenor under said obligation, and that by reason of said action on the part of the said complainant, defendant has lost its right to be subrogated to any lien which said complainant had and could have enforced.

To each of these affirmative defenses, the plaintiff and each of the intervenors demurred. The court sustained the demurrers.

As no question was raised as to the amounts of the various claims, a stipulation was made in respect to certain issues raised by the pleadings. In this stipulation, it is set forth that Charles H. Almond & Company furnished certain drawings and patterns between May 10th and September 20, 1905, for which there remains unpaid the sum of \$167.87; that said drawings and patterns were used for the making and casting of certain parts of the steamer, which said metal parts so cast from said drawings and patterns were used in the actual construction of the boat. It was also stipulated that the Puget Sound Pattern Works furnished certain drawings and patterns between June 29th and September 21, 1905, for which there remains unpaid the sum of \$182.56; that said drawings and patterns were used in the making and casting of certain metal parts of the steamer, which said metal parts, so cast from said drawings and

patterns, were used in the actual construction of the vessel.

384 It was stipulated that the Chesley Tow Boat Company, between June and August, 1905, furnished certain towing and wharfage for the material furnished the Puget Sound Engine Works for the construction of the vessel, and that said material so towed and wharfed by the said Towboat Company entered into the cost of the construction of the steamer, and that the balance due is \$3.15. That the Eyres Transfer Company, between May and September, 1905, carted from the various docks to the plant of the Puget Sound Engine Works certain material for use in the construction of the steamer, and paid advance charges to carriers, which amounts to \$55.32, and that all of the material so carted, and upon which the charges were paid, were used upon the steamer. It was further stipulated that the steamer was completed September 21, 1905; that no action was brought by the government of the United States within six months thereafter upon the bond, and that the present action was brought within a year after September 21, 1905.

The Court entered a judgment against the defendant Title Guaranty & Trust Company, and in favor of each of the claimants. The court also allowed attorney fees as part of the costs in favor of the plaintiff and each intervenor, and against the Title Guaranty & Trust Company. Appellant contends such costs are not proper.

385 Before Gilbert, Circuit Judge, and De Haven and Hunt, District Judges.

HUNT, *District Judge*, after stating the case as above, delivered the opinion of the Court.

The rulings of the Court below were, in effect, that under the terms of the contract entered into, the vessel was a public work within the terms of the statute entitled "An Act for the protection of persons furnishing materials and labor for the construction of public works," approved August 13, 1894, (28 Statutes 278), as amended by the act of February 24, 1905, (33 Statutes 811). The act of 1894 provides "that hereafter any person or persons entering into a formal contract with the United States for the construction of any public building, or the prosecution and completion of any public work or for repairs upon any public building or public work, shall be required before commencing such work to execute the usual penal bond, with good and sufficient sureties, with the additional obligations that such contractor or contractors shall promptly make payments to all persons supplying him or them labor and materials in the prosecution of the work provided for in such contract; and any person or persons making application therefor, and furnishing affidavit to the Department under the direction of which said work is being, or has been, prosecuted, that labor or materials for the prosecution of such work has been supplied by him or them, and payment for which has not been made, shall be furnished with a certified copy of said contract and bond, upon which said person or persons supplying such labor and materials shall have a right of

action, and shall be authorized to bring suit in the name of the United States for his or their use and benefit against said contractor and sureties, and to prosecute the same to final judgment and execution; Provided, That such action and its prosecutions shall involve the United States in no expense."

386 The amended act reads as follows:

"That hereafter any person or persons entering into a formal contract with the United States for the construction of any public building, or the prosecution and completion of any public work, or for repairs upon any public building or public work, shall be required, before commencing such work, to execute the usual penal bond, with good and sufficient sureties, with the additional obligation that such contractor or contractors shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work provided for in such contract; and any person, company, or corporation who has furnished labor or materials used in the construction or repair of any public building or public work, and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the United States on the bond of the contractor, and to have their rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claim and judgment of the United States. If the full amount of the liability of the surety on said bond is insufficient to pay the full amount of said claims and demands, then, after paying the full amount due the United States, the remainder shall be distributed pro rata among said interveners. If no suit should be brought by the United States within six months from the completion and final settlement of said contract, then the person or persons supplying the contractor with labor and materials shall, upon application therefor, and furnishing affidavit to the Department under the direction of which said work has been prosecuted that labor or materials for the prosecution of such work has been supplied by him or them, and payment for which has not been made, be furnished with a certified copy of said contract and bond, upon which he or they shall have a right of action, and shall be, and are hereby, authorized to bring suit in the name of the United States in the circuit court of the United States in the district in which said contract was to be performed and executed, irrespective of the amount in controversy in such suit, and not elsewhere, for his or their use and benefit, against said contractor, and his sureties, and to prosecute the same to final judgment and execution: Provided, That where suit is instituted by any of such creditors on the bond of the contractor it shall not be commenced until after the complete performance of said contract and final settlement thereof, and shall be commenced within one year after the performance and final settlement of said contract, and not later; And provided further, That where suit is so instituted by a creditor or by creditors, only one action shall be brought, and any creditor may file his claim in such action and be made party thereto within one year from the completion of the work under said contract, and not later. If the recovery on the bond should be in-

adequate to pay the amounts found due to all of said creditors, judgment shall be given to each creditor pro rata of the amount of the recovery. The surety on said bond may pay into court, for distribution among said claimants and creditors, the full amount of the sureties' liability, to wit, the penalty named in the bond, less any amount which said surety may have had to pay to the United States by reason of the execution of said bond, and upon so doing the surety will be relieved from further liability: Provided further, That in all suits instituted under the provisions of this act such personal notice of the pendency of such suits, informing them of their right to intervene as the court may order, shall be given to all known creditors, and in addition thereto notice of publication in some newspaper of general circulation, published in the state or town where the contract is being performed, for at least three successive weeks, the last publication to be at least three months before the time limited therefor."

Appellant's counsel earnestly contend that the view of the lower court is erroneous, and argue that the contract of the Puget Sound Engine works was not for the prosecution or completion of any public work, that title to the vessel did not pass to the government until completion, delivery and acceptance, and that the laborers and material men were amply protected by the lien laws of the State of Washington.

The purpose of the original act of 1894 is not altered by the amendment of 1905; nor does the amended act restrict the classes of persons who are entitled to the benefits of the bond required. As the Supreme Court has said, in comparing the two statutes, the amendment "shows the consistent purpose of congress to protect those who furnish labor or material in the prosecution of public work." *Hill v. American Surety Co.*, 200 U. S. 197. Un-

388 doubtedly, congress meant to substitute the obligation of the bond required for such a security as can in most cases be obtained by attaching a lien to the property of an individual. Such purpose harmonizes with the broad object of the whole legislation, which is the protection of persons furnishing materials and labor for public work. As protection is afforded by state statute to the material man by filing a lien upon a building erected by an individual, so may it be had through an obligation to the United States in contracts for the construction of public works. By keeping in mind that the intent of the statute is that material and labor actually contributed to the construction of the work shall be paid for, and thus that the material man and the laborer shall be protected, construction of the statute and bond is quite simple. In *United States v. National Surety Co.*, 92 Fed. 551, the Court of Appeals for the Eighth Circuit said:

"It is also noticeable that in its title the act professes to be one for the benefit of 'of persons furnishing materials and labor,' and that in the body of the act the form of the condition to be inserted in the bond for the benefit of the United States is not in terms prescribed, the only provision in that regard being that the bond shall be 'the usual penal bond'; meaning, evidently, such an obligation for the government's own protection as it had long been in the habit

of exacting from those with whom contracts were made for the doing of public work. On the other hand, the condition for the benefit of persons who might furnish materials or labor is carefully prescribed. Obviously, therefore, congress intended to afford full protection to all persons who supplied materials or labor in the construction of public buildings, or other public works, inasmuch as such persons could claim no lien thereon, whatever, the local law might be, for the labor and materials so supplied. There was no

389 occasion for legislation on the subject to which the act relates, except for the protection of those who might furnish materials or labor to persons having contracts with the government. The bond which is provided for by the act was intended to perform a double function—in the first place, to secure to the government as before, the faithful performance of all obligations which a contractor might assume toward it; and, in the second place, to protect third persons from whom the contractor obtained materials or labor. Viewed in its latter aspect, the bond, by virtue of the operation of the statute, contains an agreement between the obligors therein and such third parties that they shall be paid for whatever labor or materials they may supply to enable the principal in the bond to execute his contract with the United States. The two agreements which the bond contains, the one for the benefit of the government, and the one for the benefit of third persons, are as distinct as if they were contained in separate instruments, the government's name being used as obligee in the latter agreement merely as a matter of convenience."

It is urged that the contracts contemplated and referred to in the statute are only those which have to do with public buildings, or with such works as fortifications, river and harbor improvements and other works, where the improvement is attached to the soil, and where no mechanic's lien could attach by operation of any state statute.

In support of this argument, the appellant quotes from an opinion of Attorney General Griggs, dated June 21, 1900. A careful examination of the reasoning of Attorney General Griggs will disclose that he laid stress upon the fact that the statute of 1894 was intended, in a measure, to remedy the defect in prior legislation in the means of collection at the disposal of laborers and material men against contractors upon permanent public works, where no mechanic's or laborer's lien would attach by operation of any state statute.

390 He emphasized this view by saying that no such reason is applicable to cases of the construction of a specific article, not attached to the soil the title to which is not in the United States, but which is a mere movable article, such as a vessel, the whole title to which remains in the contractors until its completion and acceptance by the government. The opinion can not be looked upon as of special force when applied to the case before us, because, as already pointed out, it is expressly provided by article IV of the contract involved that the portion of the vessel completed and paid for under the partial payment arrangement shall become the property of the United States, the party of the second part being responsible for the proper care of such portion of the vessel so paid for until final

delivery to and acceptance by the United States, as more particularly specified in the specifications.

Again, the statute extends to construction not only of any public building, but to the prosecution and completion of "any public work," and even goes farther by including "repairs upon any public building or public work." There is no limitation that it shall only apply to public works attached to the soil; and where it is agreed that as fast as any part of the thing upon which the work is being done is completed and paid for under a percentage plan, such completed part becomes the property of the United States, no lien under a state statute could be enforced, and therefore there is no reason for excluding the construction of a vessel from within the definition of a public work.

In *United States v. Perth Amboy Shipbuilding and E. Co.*, 137 Fed. 689, the court said:

"Counsel cites in support of his proposition definitions of public works from the Century Dictionary and the American and English Encyclopedia of Law, Second Edition. Without quarreling with these definitions, we conclude that the meaning of the words 'public works' in the act is broader and more comprehensive than the dictionary meaning given to 'public works;' that public work is susceptible of application to any constructive work of a public character and is not limited to fixed works."

In *American Surety Company v. Lawrenceville Cement Company, et al.*, 110 Fed. 1017, Judge Putnam discussed the expressions used in the statute and the bonds given under the statute, and held that the statute of 1894 does not have the same aspect as the ordinary lien statutes of a state, which are generally held to cover only what has been added to the value of the property against which the lien is asserted. He points out that the underlying equity of such ordinary lien statutes requires them to be so limited in their application, but that the act of congress referred to and the bond given are susceptible of a more liberal construction which should be applied as may be necessary to effect the purpose for which the bond of the contractor is given.

The supreme court of the state of Washington approved Judge Putnam's opinion, and held that recovery could be had for the furniture for lighthouse keeper's residences under the provisions of the contract and bond then under consideration by the court.

392 *United States to the use of Standard Furniture Co. v. Henningsen, et al.*, 82 Pac. 171.

Clarkson v. Stevens, 106 U. S. 505, is also cited by appellant. The contract in that case contained a provision that the Secretary of the Navy should appoint some person, whom Stevens, the contractor, should admit within his establishment for the purpose of receiving and receipting for, on account of the Navy Department, all materials delivered therein for constructing the steamer, which materials, when so received and receipted for, should be distinctly marked with the letters "U. S.", and should become the property of and belong to the United States. The Secretary of the Navy agreed to pay as the price of the steamer, when fully completed and delivered in conformity

with the contract, a certain sum. Payments were to be made from time to time until a certain amount had been paid, when inspection was to be had, and if there should be a certification that the vessel could be fully completed according to contract for the remaining balance which might then be due, that the payment of further bills should continue. It was also provided that when Stevens should have fully completed the steamer, and she should have been delivered to and received by the agent of the United States, the full amount of the price remaining unpaid, and to become due when she should be

fully completed and accepted, was required to be paid, and a mortgage security was to be cancelled and returned. The contention of the plaintiffs in error in that case was that the title to the unfinished vessel passed, as the work progressed, to the United States, and became vested, together with a right to enforce the contract for its completion, and the security of the mortgage as against the estate of Stevens. The court of errors and appeals of New Jersey held that the title to the ship never vested in the United States as owner. The Supreme Court, through Justice Mathews, decided that the intent which controlled the construction of agreements such as was made in that case, was to be ascertained by the terms of the contract and the circumstances attending the transaction, and that the fact that advances were made out of the purchase money, according to the contract for the cost of the work, as it progressed, and that the government was authorized to require the presence of an agent to join in certifying to the accounts, were not conclusive evidence of the intent that the property in the ship should vest in the United States prior to final delivery, and, furthermore, that it did not follow that because the material provided for were declared to be the property of the United States, it was intended that they should remain so after becoming part of the structure. "Such a precaution," said Justice Mathews, "might well have been suggested, as a security against a diversion of the materials to any unauthorized use, to preserve them to the United States, in case, by reason of the failure of the work, or from any other cause, they should not be used in the vessel." The case is

readily distinguished from that before us when it is observed that the contract between Stevens and the United States contained no provision that the portion of the vessel, as it was completed and paid for, should become the property of the United States.

The recent decision of the Supreme Court, in *Ellis v. United States*, 206 U. S. 246, accords with the view that we take of the contract and bond involved in the present suit. The questions there considered by the court arose under indictments and informations filed under the act of August 1, 1892, 27 Statutes 340, relating to the limitation of the hours of service of laborers and mechanics employed upon the public works of the United States. The statute referred to provides that employment of laborers and mechanics employed by the government or by any contractor "upon any of the public works of the United States * * * is hereby limited and restricted to eight hours in any one calendar day." The words "the public works" led the Court to conclude that the objects of the labor referred to must

have some kind of permanent existence and structural unity. Justice Holmes said:

"Both of the phrases to be construed admit a broad enough interpretation to cover these cases, but the question is whether that interpretation is reasonable, and, in a *penal statute*, fair. Certainly they may be read in a narrower sense with at least equal ease. The statute says 'laborers and mechanics * * * employed
395 * * * upon any of the public works.' It does not say, and no one supposes it to mean, 'any public work.' The Words 'upon' and 'any of the,' and the plural 'works' import that the objects of labor referred to have some kind of permanent existence and structural unity, and are severally capable of being regarded as complete wholes."

* * * "It is unnecessary to lay special stress on the title to the soil in which the channels were dug, but it may be noticed that it was not in the United States. The language of the acts is 'public works of the United States.' As the works are things upon which the labor is expended, the most natural meaning of 'of the United States' is belonging to the United States."

But an important difference exists between the statute quoted from regulating hours of labor and the act of 1894, *supra*, requiring a bond by a contractor. In the one, the words of the statute are "any of the public works" of the United States, while, in the other, there are "the prosecution of any public work, or for repairs upon any public building or public work." Thus, the statute requiring the bond is more comprehensive than that controlling the hours for laborers and mechanics employed upon any of the public works, and contains the more general words, which the Supreme Court says do not occur in the law regulating hours.

Finally, taking the language of the contract for the construction of the steamer Harris, and the bond, and construing them with relation to the statute, our opinion is that it was agreed upon and intended by the parties that the property should be passed to the United States as any part or parts thereof should be completed, and that such parts so paid for did pass, that the work was a public one, and that the ruling of the lower court applying the statute of
396 1894 as amended was correct.

Appellants also claim that it has been deprived of a priority right of the United States. But no claim of the United States is before this court, and none such appears to have been before the court below. The point is not material.

It is contended that the United States ought to have been made a party to this suit. But the United States failed to institute any suit and failed to assert any rights by intervention. It does not appear to have had any interest in this action. Under the amended act, the United States has a priority under certain conditions: It may protect such prior rights by bringing suit on the bond within six months after the completion and final settlement under the contract, but if no such suit is brought, then a creditor can sue and all creditors have a right to intervene within a year. It would seem that the United States, having failed to sue, or to intervene in a

suit brought, cannot claim against the surety by reason of the execution of the bond.

It is said that application by affidavit to the department under whose direction the work of constructing the vessel was performed, was a condition precedent to bringing the suit. The amended statute contemplates that the person who may wish to bring a suit shall file an affidavit of his claim with the department having
 397 charge of the work for which the bond has been given, and obtain a certified copy of the contract and bond upon which right of action is given. The object of this requirement is to protect the department of the government which may be concerned from being required to give information upon any simple request as to the nature of the contract and bond under which the contractor may be performing his contract, and also to show good faith and interest in the subject matter. But we do not think that jurisdiction is lacking, unless such an affidavit has been filed.

Objection is made to the claims of the Eyres Transfer Company, Chesley Tow Boat Company, Almond Company, and Puget Sound Pattern Works upon the ground that bills for the labor and materials furnished by these several parties and not within the purview of the bond. The Eyres Transfer Company claimed cartage and freight money paid out. It was not a common carrier, protected by its lien on freight carried, but was a local transfer company engaged in the business of cartage and delivering. In *American Surety Company v. Lawrenceville Cement Company*, *supra*, a claim for hauling material from a regular steamboat landing to the place where the work was being performed was allowed under the following ruling, which we approve:

"We think the master was too strict with reference to some minor claims for transportation. Clearly, he was right in his illustrative suggestion which led up to his conclusion with reference to claims
 398 for trucking and water carriage. As stated by him, the carrier ordinarily has a lien for his right, which is a sufficient protection for him. Therefore, in cases of transportation by a carrier from distant points, or, indeed, from another port than the port at which the contractor's work is being done, the carrier would not ordinarily be protected by the statutory bond, for two reasons: First, transportation for considerable distances in the regular course, by the ordinary lines of either steam, sail or rail, cannot easily be brought within the words of the statute, 'supplying labor or materials'; and second, inasmuch as carriage of that character, especially under an ordinary bill of lading, or its equivalent, creates a well-recognized lien for freight, the equitable rule would apply that a carrier, under such circumstances, cannot give up his cargo, and enforce his claim against a mere surety, after he has so placed himself that the surety cannot be subrogated to the security which the law gave. The first objection, however, does not necessarily apply to truckmen who are moving materials from a place of landing to the exact locality of the work under contract, although the distance may be somewhat considerable, nor to water-borne transportation carried on by the servants of the contractor, or for short distances without the aid of steam or a fully-equipped vessel. The

second objection, moreover, must not be carried to an extreme, otherwise it would defeat the practical operation of the statute. Every person selling materials for cash holds a lien for the purchase money until he voluntarily waives it by delivery; and every person engaged in transportation, who is not the mere servant of the owner of the merchandise transported, holds a carrier's lien even though the carriage is of miscellaneous parcels, over short distances in the immediate locality, and at frequent, irregular intervals. Nevertheless, with reference to each, such liens are not ordinarily insisted on, and it would be an unreasonable construction of the statute to hold that it intended to interfere with the convenience of minor dealings in such methods as the usual practices establish. Therefore, as already stated with reference to either class, to insist on the fact that the lien is waived, and short credit given, would defeat the beneficial purpose of the statute, and the practical ends which it is intended to accomplish."

We cannot approve, though, of the claim of the Eyres Company for freight money advanced to the carriers and added to the cartage bill.

399 The claim of the Chesley Tow Boat Company was for wharfage. Such a claim seems to be within the reasonable purview of the statute.

U. S. ex rel. Laughlin v. Morgan, 111 Fed. 474.

The claims of the Allmond Company and the Puget Sound Pattern Works were for patterns furnished to the molding department of the Puget Sound Engine Works. The patterns were used for the castings which went into the vessel. Why should not those who furnished the patterns be protected as are those who erect the scaffolding upon which carpenters stand, in doing their work upon the actual construction of a ship? We believe they should be.

The point is made that the claims of laborers and material men are not assignable under the act. But in the United States, to the Use of Fidelity National Bank of Spokane, v. Rundle, et al, 100 Federal, 400, the right of laborers and material men to enforce the obligation of the sureties on the bond of a contractor for government work as required by 28 Statutes 278 was held to be assignable.

Error is assigned upon the action of the court in allowing each of the intervenors a statutory fee of ten dollars, taxed as costs. The decision in the case of "The Oregon," 133 Fed. 609, sustains the action of the lower court.

It is unnecessary to discuss the other points raised by appellant. We have examined them all and find no reason to reverse the decision.

400 The judgment will be modified by reducing the amount awarded to the Eyres Company by deducting \$55.32, amount of freight money paid. As so modified, the judgment in favor of that particular claimant will be affirmed, and the judgments in favor of all other claimants will be affirmed.

Endorsed: Opinion. Filed June 10, 1908. F. D. Monckton, Clerk.

401 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1451.

THE TITLE GUARANTY & TRUST COMPANY, of Scranton, Pennsylvania, a Corporation, Appellant, and Plaintiff in Error,

vs.

THE CRANE COMPANY, a Corporation et al., Appellees, and Defendants in Error.

Decree and Judgment U. S. Circuit Court of Appeals.

Appeal from and upon Writ of Error to the Circuit Court of the United States for the Western District of Washington, Northern Division.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Western District of Washington, Northern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the judgment of the said Circuit Court in this cause be, and the same is hereby, modified by reducing the amount awarded to the Eyres Company by deducting fifty-five and thirty-two hundredths (55.32) dollars, amount of freight money paid, and as so modified, the judgment in favor of that particular claimant be, and hereby is affirmed; and that the judgment of the said Circuit Court in favor of all other claimants be, and
402 hereby is affirmed, with costs to the appellees and defendants in error.

[Endorsed:] Decree and Judgment U. S. Circuit Court of Appeals. Filed and Entered June 10, 1908. F. D. Monckton, Clerk.

403 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1451.

THE TITLE GUARANTY & TRUST COMPANY, of Scranton, Pennsylvania, Appellant, and Plaintiff in Error,

vs.

THE CRANE COMPANY, a Corporation et al., Appellees, and Defendants in Error.

Order Staying Issuance of Mandate.

It appearing that the counsel for the appellant and plaintiff in error intend to apply for the issuance of a writ of error in the above-entitled cause returnable in the Supreme Court of the United States, it is ordered that the Mandate of this Court be, and hereby is, stayed for the period of thirty (30) days from date.

WM. W. MORROW,
United States Circuit Judge.

Dated, July 6th, 1908.

[Endorsed:] Docketed, No. 1451. United States Circuit Court of Appeals for the Ninth Circuit. Order Staying Mandate for 30 days from date. Filed Jul. 6, 1908. F. D. Monckton, Clerk.

404 In the Supreme Court of the United States.

No. —.

THE TITLE GUARANTY & TRUST COMPANY, of Scranton, Pennsylvania, Plaintiff in Error,

vs.

THE CRANE COMPANY, a Corporation, et al., Defendants in Error.

Petition for Writ of Error.

Comes now the Title Guaranty & Trust Company of Scranton, Pennsylvania, the plaintiff in error, and respectfully shows that there was rendered and filed a judgment in the United States Circuit Court of Appeals for the Ninth Circuit sitting in the City of San Francisco, State of California in the cause there pending in said Court wherein the above entitled plaintiff in error was there appellant and plaintiff in error, and the defendants in error, the Crane Company et al., were appellees and defendants in error, which cause was numbered in said court as No. 1451, on the 10th day of June, 1908, affirming in part a judgment of the United States Circuit Court for the Western District of Washington, Northern Division, in said case, and that thereby in the affirmance of said judgment manifest error has intervened to the great damage of your petitioner.

That the matter in controversy in said suit exceeds the sum of One Thousand Dollars (\$1000.00) besides costs, and exceeds the
405 sum of Nine Thousand Dollars (\$9000.00), besides costs, and that this is not a case in which the decision of the Circuit Court of Appeals is made final and is a proper case to be reviewed by the Supreme Court of the United States on writ of error.

That said cause arose under the laws of the United States, and that jurisdiction of the Circuit Court was not dependent upon the opposite parties to the said controversy being aliens and citizens of the United States or citizens of different states, and that said cause arose under and involves the construction of the laws and statutes of the United States and particularly under the Act of Congress approved August 13, 1894, entitled: "An Act for the protection of persons furnishing material and labor for the construction of public works", appearing in Volume 28 of the General Statutes at page 278, and an Act amendatory thereto approved February 24, 1905, entitled "An Act to amend an Act approved August 13, 1894, entitled 'An Act for the protection of persons furnishing material and labor for the construction of public works'", appearing in Volume 33 of the General Statutes at page 811.

Wherefore, Your petitioner prays for the allowance of a writ of error to the end that the cause may be carried to the Supreme Court of the United States, and that the transcript of the record and proceedings on which said judgment is based, duly authenticated, be sent to the Supreme Court of the United States and for such other process

406 as is required to perfect a writ of error herein prayed for, to the end that the error herein may be corrected.

CARROLL B. GRAVES,
EDWARD B. PALMER,
JAMES B. MURPHY,

Attorneys for Plaintiffs in Error.

We, the undersigned attorneys for the defendants in error in the above and foregoing action, acknowledge due and timely service of the attached Petition for Writ of Error, and receipt of a true copy thereof.

H. T. GRANGER,

Attorneys for Crane Co., and Bates & Clark Co., B. Manke and James Johnston.

KERR & McCORD,

Attorneys for Pacific Engineering Company.

WARDALL AND WARDALL,

Attorneys for Whiton Hardware

Co., and Davis & Buchbaum.

ALLEN, ALLEN & STRATTON

& JAY C. ALLEN,

Attorneys for Lewis, Anderson, Ford

Co., Inc., & Chesley Tow Boat Co.

McCLURE & McCLURE,

Attorneys for The Marine Manufacturing & Supply Co., Eyres Transfer Co., Bowles Co., and Dundee & Erland Co.

IRA BRONSON &

D. B. TREFETHEN,

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BENTON EMBREE,

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S. H. STEELE,

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A. A. ANDERSON,

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FLUECK & BEBB,

Attorneys for The Eagle Brass Foundry.

EVERETT C. ELLIS,

Attorney for Washington Iron Works Co.

CUTTS & DORETY,

Attorneys for M. A. Barger & Company.

GRAY & STERN,

Attorneys for Puget Sound Engine Works, Inc., and Westerman Iron Works; Schwabacher Hardware Co., Puget Sound Pattern Works, Eagle Iron Foundry; Meacham & Pinard, George B. Adair, Columbia Engineering Works, John E. Good Metal Works, Standard Boiler Works, Charles H. Allmond & Company; Gorham Rubber Company, Olympia Foundry Co.; Dunham, Carrigan & Hayden Co. and Henry R. Worthington and all Other Parties.

(Endorsed:) No. —. Orig. In the Supreme Court of the United States. The Title Guaranty & Trust Co. of Scranton, Penna., Plaintiffs in Error, vs. The Crane Company, a corporation, et al., Defendants in Error. Petition for Writ of Error. Filed Aug. 6, 1908. F. D. Monckton, Clerk. Graves, Palmer & Murphy, Lowman Bldg., Seattle, Wash., Attorneys for Plaintiff in Error.

408 In the Supreme Court of the United States.

No. —.

THE TITLE GUARANTY & TRUST COMPANY OF SCRANTON, PENNSYLVANIA, *Plaintiff in Error*,

vs.

THE CRANE COMPANY, a Corporation, et al., Defendants in Error.

Assignments of Error on Writ of Error.

Comes now The Title Guaranty & Trust Company, of Scranton, Pennsylvania, by its attorneys, the undersigned, and in connection with its application for a writ of error to the Supreme Court of the United States filed herewith from the final judgment of this court entered herein on the 10th day of June, 1908, and all orders in said case affecting the substantial rights of the plaintiff in error, avers that said final order and judgment are erroneous in the following particulars, to-wit:

I.

The Court erred in affirming the judgment of the Circuit Court in any particular and in every particular in which said judgment was affirmed and in not reversing the same as to the claims of each and every claimant.

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II.

The court erred in holding that the property in the vessel in question passed to the United States as the parts thereof were completed.

III.

The court erred in holding that the work in question and the construction of the vessel was a public work, within the meaning of the act of February 24, 1905, as it appears in Volume 33 of the United States General Statutes, page 811, or that it was a public work within the meaning of any statute of the United States.

IV.

The court erred in holding that the United States was not a necessary party to the action and in holding that whether or not the United States is a proper party is not put in issue.

V.

The court erred in holding that the application for and procurement of a certified copy of the bond sued upon was not a necessary

prerequisite to the institution of the above entitled action in the Circuit Court.

VI.

The court erred in holding that the Circuit Court had jurisdiction of the action regardless of the fact that a certified copy of the bond sued upon had not been procured prior to its institution.

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VII.

The court erred in holding that the claims of labor and material were assignable and that the assignee of such claims had a right of action thereon.

VIII.

The court erred in affirming the action of the lower court in entering an order overruling the separate demurrers of the plaintiff and error to the complaint of Crane Company and to the separate complaints in intervention of the Olympic Foundry Company, a corporation; The Marine Manufacturing and Supply Company, (a corporation); A. H. Holmstrom, doing business as A. H. Holstrom Iron Works; Bowles Company (a corporation); Sunic and Erland Company (a corporation), Puget Sound Machinery Depot (a corporation), The Vulcan Iron Works (a corporation), Pacific Engineering Company, (a corporation), S. B. Hicks & Sons Company (a corporation), George Broom, Whiton Hardware Company (a corporation), Frederick & Nelson (a corporation), Washington Iron Works Company (a corporation), James Tracy and John Tracy, copartners doing business as The Eagle Brass Foundry, Chesley Tow Boat Company (a corporation), T. J. King and A. Winge (copartners doing business under the name of King & Winge, James Johnston, L. W. Davis and J. H. Buxbaum, copartners doing business under the firm name of Davis & Buxbaum, Schwabacher Hardware Company (a corporation), Gorham Rubber Company (a corporation), B. T. Bates and R. O. Fraser, copartners doing
411 business as Puget Sound Pattern Works, J. G. Meacham and W. J. Pinard, copartners doing business as Meacham & Pinard, Dunham, Carrigan & Hayden Company (a corporation), M. A. Barger, doing business as M. A. Barger & Company, Westerman Iron Works (a corporation), F. J. Flajole and G. F. Barritt, copartners doing business as Standard Boiler Works, Charles H. Allmond and G. E. Ahlberg, copartners doing business as Charles H. Allmond & Company, Columbia Engineering Works (a corporation), John E. Good, doing business under the firm name and style of John E. Good Metal Works, J. T. Fulmele, doing business under the firm name and style of Eagle Iron Foundry, Lewis, Anderson, Ford Co. inc. (a corporation) Eyres Transfer Company (a corporation), F. R. Bates and T. S. Clark, copartners doing business under the firm name and style of Bates & Clark Company, B. Manke, George B. Adair, and Henry R. Worthington, and the court erred in affirming the action of the Circuit Court in overruling each of the demurrers of the plaintiff in error to each of the said complaints.

IX.

The court erred in affirming the judgment of the Circuit Court in entering an order sustaining the demurrers of plaintiff interveners in that court to the first affirmative defense set out in the answer of this plaintiff in error and the court erred in affirming the action of the Circuit Court in sustaining the demurrers of the said plaintiffs and interveners to the second cause of action set out in said answer.

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X.

The court erred in affirming the action of the lower court in sustaining the several demurrers of the plaintiff and interveners to the third affirmative defense set out in said answer.

XI.

The court erred in affirming the action of the Circuit Court in sustaining the several demurrers of said plaintiff and interveners to the fourth affirmative defense set out in said answer.

XII.

The court erred in approving and affirming the fifth Finding of Fact of the said Circuit Court.

XIII.

The court erred in approving and affirming the sixth subdivision of said Findings, that Charles H. Allmond & Company furnished material and did work upon said vessel.

XIV.

The court erred in approving the finding that the Chesley Tow Boat Company did any work, or furnished any material upon said vessel.

XV.

The court erred in approving in part the finding that the Eyres Transfer Company did any work or furnished any material in the construction of said vessel.

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XVI.

The court erred in approving the first Conclusion of Law made by the Circuit Court.

XVII.

The court erred in approving the second Conclusion of Law made by the Circuit Court.

XVIII.

The court erred in approving the third Conclusion of Law made by the Circuit Court.

XIX.

The court erred in approving the fourth Conclusion of Law made by the said Circuit Court.

XX.

The court erred in entering a judgment in favor of each of the defendants in error, and against the plaintiff in error for any sum whatsoever.

XXI.

The court erred in overruling the exception of the plaintiff in error to the cost bill of the defendants in error, and in allowing each of the claimants a statutory attorney's fee of \$10.00.

GRAVES, PALMER & MURPHY,

*Attorneys for Title Guaranty & Trust
Company of Scranton, Pennsylvania.*

414 We, the undersigned attorneys for the defendants in error in the above and foregoing action, acknowledge due and timely service of the attached Assignments of Error on Writ of Error, and the receipt of a true copy thereof July 1, 1908.

H. T. GRANGER,

*Attorneys from Crane Co., and Bates &
Clark Co., B. Manke, and James Johnson.*

KERR & McCORD,

Attorneys for Pacific Engineering Company.

WARDALL AND WARDALL,

*Attorneys for Whiton Hardware Co.,
and Davis & Buxbaum.*

ALLEN, ALLEN & STRATTON & JAY C.

ALLEN,

*Attorneys for Lewis, Anderson, Ford
& Co., Inc., & Chesley Tow Boat Co.*

McCLURE & McCLURE,

*Attorneys for the Marine Manufacturing & Supply
Co., Eyres Transfer Co., Bowles & Co., and Dundee
& Erland Co.*

IRA BRONSON & D. B. TREFETHEN,

Attorneys for Puget Sound Machinery Depot.

BENTON EMBREE,

*Attorneys for the Vulcan Iron Works
and King & Winge.*

GEO. H. KING,

Attorneys for George Broom.

WRIGHT & KELLEHER,

Attorneys for Frederick & Nelson.

S. H. STEELE,

Attorneys for S. B. Hicks & Sons Co.

A. A. ANDERSON,

Attorney for A. H. Holstrom Iron Works.

FLUECK & BEBB,

Attorney for the Eagle Brass Foundry.

EVERETT C. ELLIS,

Attorney for Washington Iron Works Co.
CUTTS & DORETY,*Attorneys for M. A. Bargar & Company.*
GRAY & STERN,*Attorneys for Puget Sound Engine Works, Inc., and
Westerman Iron Works, Schwabacher Hardware
Co., Puget Sound Pattern Works, Eagle Iron
Foundry, Meacham & Pinard, George B. Adair,
Columbia Engineering Works; John E. Good Metal
Works, Standard Boiler Works, Charles H. All-
mond & Company, Gorham Rubber Company,
Olympia Foundry Co., Dunham, Carrigan &
Hayden Co., and Henry R. Worthington, and all
Other Parties.*

(Endorsed:) No. —. In the Supreme Court of the United States.
The Title Guaranty & Trust Company of Scranton, Pennsylvania,
Plaintiff in Error, vs. The Crane Company, a corporation, et al.,
Defendants in Error. Assignments of Error on Writ of Error.
Filed Aug. 6, 1908. F. D. Monckton, Clerk. Graves, Palmer &
Murphy, Lowman Building, Seattle, Wash. Attorneys for plaintiff
in error.

416 In the Supreme Court of the United States.

THE TITLE GUARANTY & TRUST COMPANY OF SCRANTON, PENNSYLVANIA, Plaintiff in Error,

vs.

THE CRANE COMPANY, a Corporation, et al., Defendants in Error.

We, the undersigned, hereby consent that the bond on the writ
of error from the Circuit Court of Appeals of the Ninth Circuit, to
the Supreme Court of the United States, may be fixed in the sum
of Fifteen Thousand Dollars (\$15,000.00).

Dated this 29th day of June, 1908.

H. T. GRANGER,

*Attorney for Crane Co., Plaintiff, and Bates &
Clark Co., B. Manke and James Johnston, In-
tervenors.*

KERR & McCORD,

*Attorneys for Pacific Engineering
Company, Intervenor.*

WARDALL & WARDALL,

*Attorneys for Whiton Hardware Co. and
Davis & Buxbaum, Intervenor.*

ALLEN, ALLEN & STRATTON,

JAY C. ALLEN,

*Attorneys for Lewis, Anderson, Ford Co., Inc.,
& Chesley Tow Boat Co., Intervenor.*

417

McCLURE & McCLURE,

Attorneys for The Marine Manufacurting & Supply Co., Eyres Transfer Co., Bowles Co., and Dundee & Erland Co., Intervenors.

IRA BRONSON &

D. B. TREFETHEN,

*Attorneys for Puget Sound Machinery**Depot, Intervenor.*

BENTON EMBREE,

Attorney for The Vulcan Iron Works and King & Winge, Intervenors.

GEO. H. KING,

Attorney for George Broom, Intervenor.

WRIGHT & KELLEHER,

Attorneys for Frederick & Nelson, Intervenors.

S. H. STEELE,

Attorney for S. B. Hicks & Sons Co., Intervenor.

A. A. ANDERSON,

Attorney for A. H. Holstrom Iron Works, Intervenor.

FLUECK & BEBB,

Attorneys for The Eagle Brass Foundry, Intervenor.

EVERETT C. ELLIS,

Attorney for Washington Iron Works Co., Intervenor.

CUTTS & DORETY,

Attorneys for M. A. Bargar & Company, Intervenor.

GRAY & STERN,

Attorneys for Puget Sound Engine Works, Inc., and Westerman Iron Works, Schwabacher Hardware Co., Puget Sound Pattern Works, Eagle Iron Foundry, Meacham & Pinard, George B. Adair, Columbia Engineering Works, John E. Good Metal Works, Standard Boiler Works, Charles H. Allmond & Company, Gorham Rubber Company, Olympic Foundry Co., Dunham, Carrigan & Hayden Co., Henry R. Worthington, Intervenors.

Attorneys for Title Guaranty & Trust Company of Scranton, Pennsylvania.

418 (Endorsed:) No. —. In the Supreme Court of the United States. The Title Guaranty & Trust Co. of Scranton, Penna., Plaintiff-in-Error, vs. The Crane Company, a corporation, et al., Defendants in Error. Consent to Amt. Bond. Filed Aug. 6, 1908. F. D. Monckton, Clerk. Graves, Palmer & Murphy, Lowman Building, Seattle, Wash., Attorneys for Plaintiff.

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In the Supreme Court of the United States.

No. —.

THE TITLE GUARANTY & TRUST COMPANY OF SCRANTON, PENNSYLVANIA, a Corporation, Plaintiff in Error,
vs.

THE CRANE COMPANY, a Corporation; F. R. BATES and T. S. CLARK, Copartners, Doing Business as Bates & Clark Company; B. Manke, James Johnston, Pacific Engineering Company, a Corporation; Whiton Hardware Company, a Corporation; L. W. Davis and J. H. Buxbaum, Copartners, Doing Business under the Firm Name and Style of Davis & Nuxbaum; Lewis, Anderson, Ford Co., Inc., a Corporation; Chesley Tow Boat Company, a Corporation; The Marine Manufacturing & Supply Company, a Corporation; Eyres Transfer Company, a Corporation; Bowles Company, a Corporation; Sunde & Erland Company, a Corporation; Puget Sound Machinery Depot, a Corporation; The Vulcan Iron Works, a Corporation; J. T. King and A. Winge, Copartners, Doing Business under the Name of King & Winge; George Broom, Frederick & Nelson, a Corporation; S. B. Hicks & Sons Company, a Corporation; A. H. Holstrom, Doing Business as A. H. Holstrom Iron Works; James Tracy and John Tracy, Copartners, Doing Business as the Eagle Brass Foundry; Washington Iron Works Company, a Corporation; M. A. Barger, Doing Business as M. A. Barger & Company; Westerman Iron Works, a Corporation; Schwabacher Hardware Company, a Corporation; B. D. Bates and R. O. Fraser, Doing Business under the Firm Name and Style of Puget Sound Pattern Works; J. T. Fulmele, Doing Business under the Firm Name and Style of Eagle Iron Foundry; J. G. Meachem and W. J. Pinard, Copartners, Doing Business as Meachem & Pinard; George B. Adair, Columbia Engineering Works, a Corporation; John E. Good, Doing Business as John E. Good Metal Works; F. J. Flajole and C. F. Barritt, Copartners, Doing Business as Standard Boiler Works; Charles H. Allmond and
420 G. E. Ahlberg, Copartners, Doing Business as Charles H. Allmond & Company; Gorham Rubber Company, a Corporation; Olympic Foundry Company, a Corporation; Dunham, Carrigan & Hayden Company, a Corporation; Henry Worthington, Puget Sound Engine Works, Inc., Defendants in Error.

Bond on Writ of Error.

Know all men by these presents, that we, the Title Guaranty & Trust Company of Scranton, Pennsylvania, a corporation, as principal, and the Fidelity and Deposit Company of Maryland, a corporation, having its principal place of business in the City of Baltimore, in the State of Maryland, having a paid-up capital and surplus of over \$1,150,000, duly incorporated under the laws of said State for the purpose of making, guaranteeing or becoming surety

upon bonds or undertakings required or authorized by law, and licensed by the insurance commissioner of the State of Washington and of the State of California as having complied with all the requirements of the laws of the said state of Washington and the said State of California regulating the formation and admission of corporations to transact business in the said states as surety, are held and firmly bound unto the above-named Crane Company, a corporation; Bates & Clark Company; B. Manke; James Johnston; Pacific Engineering Company, a corporation; Whiton Hardware Company, a corporation; Davis & Buxbaum; Lewis, Anderson, Ford Co. Inc., a corporation; Chesley Tow Boat Company, a corporation; The

421 Marine Manufacturing & Supply Company, a corporation; Eyres Transfer Company, a corporation; Bowles Company, a corporation; Sunde & Erland Company, a corporation; Puget Sound Machinery Depot, a corporation; The Vulcan Iron Works, a corporation; King & Winge; George Broom; Frederick & Nelson, a corporation; S. B. Hicks & Sons Company, a corporation; A. H. Holstrom Iron Works; Eagle Brass Foundry; Washington Iron Works Company, a corporation; M. A. Barger & Company; Westerman Iron Works, a corporation; Schwabacher Hardware Company, a corporation; Puget Sound Pattern Works; Eagle Iron Foundry; Meachem & Pinard; George B. Adair; Columbia Engineering Works, a corporation; John E. Good Metal Works; Standard Boiler Works; Charles H. Allmond & Company, a corporation; Gorham Rubber Company, a corporation; Olympic Foundry Company, a corporation; Dunham, Carrigan & Hayden Company, a corporation; Henry Worthington and the Puget Sound Engine Works, Inc., in the penal sum of \$15,000 to be paid to the said parties; for the payment of which, well and truly to be made, the said principal and surety binds themselves, and the successors of each, jointly and severally, firmly by these presents.

Executed, sealed and dated this 6th day of July, in the year of our Lord one thousand nine hundred and eight.

Whereas the above named principal, the Title Guaranty & Trust Company of Scranton, Pennsylvania, plaintiff in error has prosecuted a writ of error to the Supreme Court of the United States to reverse a judgment rendered in the above entitled suit by the Circuit Court of Appeals for the Ninth Circuit,

422 Now, therefore, the condition of this obligation is such that if the above bonded, the Title Guaranty & Trust Company of Scranton, Pennsylvania, shall prosecute said writ of error to effect and answer all damages and costs if it shall fail to make said writ of error good then this obligation to be void; otherwise to remain in full force and virtue.

**TITLE GUARANTY & TRUST COMPANY OF
SCRANTON, PENNSYLVANIA.**

By JNO. R. SCOTT, *Att'y-in-Fact*, and

By GRAVES, PALMER & MURPHY, *Its Attorneys*.

[SEAL.] **FIDELITY & DEPOSIT COMPANY OF
MARYLAND.**

By JOHN H. WIGHT, *Vice-President*, and

PHILIP L. SMALL, *Its Assistant Secretary*.

STATE OF MARYLAND,
City of Baltimore, ss:

On this 21st day of July, A. D. 1908, before the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and qualified, came John H. Wight, Vice-President, and Philip L. Small, Assistant Secretary, of the Fidelity and Deposit Company of Maryland, to me personally known to be the individuals and officers described in, and who executed, the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposeth and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signature as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

In testimony whereof, I have hereunto set my hand and affixed my Official Seal, at the City of Baltimore, the day and year first above written.

[SEAL.]

FRED. S. AXTELL,
Notary Public.

Commission expires May, 1910.

Approved this 31st day of July, 1908.

JOSEPH McKENNA,
Asso. Justice Supreme Court U. S.

(Endorsed:) No. —. In the United States Supreme Court. Title Guaranty & Trust Company of Scranton, Penna. Plaintiff in Error, vs. The Crane Company, a corporation, et al., Defendants in Error. Bond. Filed Aug. 6, 1908. F. D. Monckton, Clerk. Graves, Palmer & Murphy, Lowman Bldg., Seattle, Wash. Att'ys for Plaintiff in Error.

424 In the Supreme Court of the United States.

No. —.

THE TITLE GUARANTY & TRUST COMPANY OF SCRANTON, PENNSYLVANIA, Plaintiff in Error,

vs.

THE CRANE COMPANY, a Corporation, et al., Defendants in Error.

The Title Guaranty & Trust Company of Scranton, Pennsylvania, plaintiff in error having filed its petition in the above entitled cause wherein it prays for the allowance of a writ of error directed to the Circuit Court of Appeals for the Ninth District, and it appearing from the said petition and the certified transcript of the record of said cause in said court that the matter in controversy exceeds the sum of one thousand dollars besides costs and exceeds the sum of nine thousand dollars besides costs, and that the case is not one in

which the decision of the Circuit Court of Appeals is made final and is a proper cause to be reviewed by this Court, and that it arose under the laws and statutes of the United States, and that the jurisdiction of the said Circuit Court was not dependent upon the opposite parties to the controversy, being aliens and citizens of different states,

and that it did not arise under the patent laws or the revenue laws or under the criminal law, but out of a contract which draws into question the construction and application of the statutes and laws of the United States, and that a bond in the sum of \$15,000, is sufficient security to fully indemnify and save harmless the defendants in error herein.

Now, therefore, the prayer of said petition is hereby granted, and a writ of error from this court to the Circuit Court of Appeals for the Ninth Circuit is hereby directed to be issued upon the said plaintiff in error giving a bond in the sum of \$15,000, conditioned as required by law.

Done this 31st day of July, 1908.

JOSEPH McKENNA,

Justice of the Supreme Court of the United States.

(Endorsed:) No. —. The Title Guaranty & Trust Co. of Scranton, Penna. Plaintiff in Error vs. The Crane Company, a corporation, et al., Defendants in Error. Order. Filed Aug. 6, 1908. F. D. Monckton, Clerk. Graves, Palmer & Murphy, Lowman Bldg. Seattle, Wash. Att'ys for Plaintiff in Error.

In the Supreme Court of the United States.

No. —.

THE TITLE GUARANTY & TRUST COMPANY OF SCRANTON, PENNSYLVANIA, Plaintiff in Error,

vs.

THE CRANE COMPANY, a Corporation, et al., Defendants in Error.

This matter coming on this day duly and regularly to be heard upon the application of the plaintiff for an order superseding a judgment rendered in the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco in the State of California, wherein the above entitled plaintiff in error was plaintiff in error and the above entitled defendants in error were defendants in error therein, which cause is numbered 1451 according to the method of numbering said causes in said court, which judgment affirmed a certain judgment of the Circuit Court of the United States for the Western District of Washington, Northern Division, rendering judgment in favor of said defendants in error and against the said plaintiff in error, and whereas a writ of error has been allowed from this court to the United States Circuit Court of Appeals for the Ninth Circuit to this court for the purpose of reviewing the correctness of said judgment, and that a bond conditioned as required by statute

in a sum fixed by the court as sufficient has been approved and filed;

427 Now, therefore, it is hereby ordered that the said bond filed herein shall operate as a supersedeas and shall supersede the judgment rendered in said cause by the United States Circuit Court of Appeals for the Ninth Circuit, and said judgment is hereby superseded and execution thereon stayed until this court shall have reviewed and passed upon the correctness of said judgment, and the Clerk of this Court is hereby directed to notify the Clerk of said Circuit Court of Appeals of the entry of this order and request him to delay the issuance of a mandate upon said judgment, and to stay any execution thereof until further order of this court.

Dated this 31st day of July, 1908.

JOSEPH MCKENNA,

Justice of the Supreme Court of the United States.

We hereby acknowledge due, regular and timely service upon us of the foregoing order.

H. T. GRANGER,

Attorney for Crane Company, Bates & Clark, B. Manke., and John Johnston.

KERR & McCORD,

Attorneys for Pacific Engineering Co.

WARDALL AND WARDALL,

Attorneys for Davis & Burbaum and Whiton Hardware Company.

ALLEN, ALLEN & STRATTON, JAY C.

ALLEN,

Attorneys for Lewis, Anderson, Ford Co., and Chesley Tow Boat Company.

428

McCLURE & McCLURE,

Attorneys for Marine Mfg. & Supply Co., Eyres Transfer Company, Sunde and Erland, and Bowles Company.

IRA BRONSON & D. B. TREFETHEN,

Attorneys for Puget Sound Machinery Depot.

BENTON EMBREE,

Attorney for Vulcan Iron Works and King & Winge.

GEO. H. KING,

Attorney for George Broom.

WRIGHT & KELLEHER,

Attorneys for Frederick & Nelson.

S. H. STEELE,

Attorney for S. B. Hicks & Sons Co.

A. A. ANDERSON,

Attorney for A. H. Holstrom Iron Works Co.

FLUECK & BEBB,

Attorney for Eagle Brass Foundry.

EVERETT C. ELLIS,

Attorney for Washington Iron Works.

CUTTS & DORETY,

Attorneys for M. A. Bargar & Company.

GRAY & STERN,

*Attorneys for Westerman Iron Works, a Corporation;
Schwabacher Hardware Company, a Corporation;
Puget Sound Pattern Works, Eagle Iron Foundry,
Meacham & Pinard, George B. Adair, Columbia
Engineering Works, a Corporation; John E. Good
Metal Works, Standard Boiler Works, Charles H.
Almond & Company, Gorham Rubber Company,
a Corporation; Olympic Foundry Company, a Cor-
poration; Henry Worthington and the Puget Sound
Engine Works, Inc., and for all other parties.*

(Endorsed:) In the Supreme Court of the United States. The Title Guaranty & Trust Company of Scranton, Pennsylvania, Plaintiff-in-Error, vs. The Crane Company, a corporation, et al., Defendants in Error. Order. Filed Aug. 6, 1908. F. D. Monckton, Clerk. Graves, Palmer & Murphy, Lowman Building, Seattle, Wash. Attorneys for Plaintiff-in-Error.

429 United States Circuit Court of Appeals for the Ninth Circuit.
No. 1451.

THE TITLE GUARANTY AND TRUST COMPANY OF SCRANTON, PENN-
SYLVANIA, Appellant and Plaintiff in Error,

vs.

THE CRANE COMPANY (a Corporation) et al., Appellees and De-
fendants in Error.

*Certificate of Clerk U. S. Circuit Court of Appeals to Transcript of
Record Upon Return to Writ of Error.*

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing fifty-nine (59) pages, numbered from one (1) to fifty-nine (59), inclusive, to be a true copy of the Assignment of Errors and of all proceedings had in the above entitled case in the said the United States Circuit Court of Appeals for the Ninth Circuit, including the Opinion filed herein, as the same remain of record in my office, and that the same in connection with the preceding certified copy of the Printed Transcript of Record constitute a true copy of the complete record in the above-entitled case and the Transcript of Record upon return to the annexed Writ of Error therein from the Supreme Court of the United States.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this twenty-fifth day of August, A. D. 1908.

[Seal United States Circuit Court of Appeals, Ninth
Circuit.]

F. D. MONCKTON,

Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

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In the Supreme Court of the United States.

THE TITLE GUARANTY & TRUST COMPANY OF SCRANTON, PENNSYLVANIA, Plaintiff in Error,

VS.

THE CRANE COMPANY, a Corporation; F. R. BATES and T. S. CLARK, Copartners Doing Business as Bates & Clark Company; B. Manke, James Johnson, Pacific Engineering Company, a Corporation; Whiton Hardware Company, a Corporation; L. W. Davis and J. H. Buxbaum, Copartners Doing Business under the Firm Name and Style of Davis & Buxbaum; Lewis, Anderson, Ford Co., Inc., a Corporation; Chesley Tow Boat Company, a Corporation; Marine Manufacturing & Supply Company, a Corporation; Sunde and Erland Company, a Corporation; Puget Sound Machinery Depot, a Corporation; The Vulcan Iron Works, a Corporation; J. T. King and A. Winge, Copartners Doing Business under the Name of King & Winge; George Broom, Frederick & Nelson, a Corporation; S. B. Hicks & Sons Company, a Corporation; A. H. Holmstrom, Doing Business as A. H. Holmstrom Iron Works; James Tracy and John Tracy, Copartners Doing Business as The Eagle Brass Foundry; Washington Iron Works Company, a Corporation; M. A. Bargar, Doing Business as M. A. Bargar & Company; Westerman Iron Works, a Corporation; Schwabacher Hardware Company, a Corporation; B. D. Bates and R. O. Fraser, Copartners Doing Business Under the Firm Name and Style of Puget Sound Pattern Works; J. T. Fulemele, Doing Business under the Firm Name and Style of Eagle Iron Company; J. G. Meacham and W. J. Pinard, Copartners Doing Business as Meacham & Pinard; George B. Adair, Columbia Engineering Works, a Corporation; John E. Good, Doing Business as John E. Good Metal Works; F. J. Flajole and C. F. Barritt, Copartners Doing Business as Standard Boiler Works; Charles H. Allmond and G. E. Ahlberg, Copartners Doing Business as Charles H. Allmond & Company; Olympic Foundry Company, a Corporation; Dunham, Carrigan & Hayden Company, a Corporation; Henry Worthington, Eyres Transfer Company, a Corporation; Bowles Company, a Corporation; Gorham Rubber Company, a Corporation; and Puget Sound Engine Works, a Corporation; Defendants in Error.

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Writ of Error.

The President of the United States to the Honorable, the Judges of the Circuit Court of Appeals for the Ninth Circuit, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of Appeals before you, or some of you, between the Title Guaranty & Trust Company of Scranton, Pennsylvania, plaintiff in error, and The Crane Company, a corporation; F. R. Bates & T. S. Clark, copartners doing business as Bates & Clark Company; B. Manke; James Johnston; Pacific Engineering Company, a corporation; Whiton Hardware

Company, a corporation; L. W. Davis and J. H. Buxbaum, copartners doing business under the firm name and style of Davis & Buxbaum; Lewis, Anderson, Ford Co. Inc., a corporation; Chesley Tow Boat Company, a corporation; Marine Manufacturing & Supply Company, a corporation; Eyres Transfer Company, a corporation; Bowles Company, a corporation; Sunde and Erland Company, a corporation; Puget Sound Machinery Depot, a corporation; The Vulcan Iron Works, a corporation; J. T. King and A. Winge, copartners doing business under the name of King & Winge; George Broom; Frederick & Nelson, a corporation; S. B. Hicks & Sons Company, a corporation; A. H. Holmstrom, doing business as A. H. Holmstrom Iron Works; James Tracy and John Tracy, copartners doing business as The Eagle Brass Foundry; Washington Iron Works Company, a corporation; M. A. Bargar, doing business as M. A. Bargar & Company; Westerman Iron Works, a corporation; Schwabacher Hardware Company, a corporation; B. D. Bates and R. O. Fraser, copartners doing business under the firm name and style of Puget Sound Pattern Works; J. T. Fulmele, doing business under the firm name and style of Eagle Iron Foundry; J. G. Meacham and W. J. Pinard, co-partners doing business as Meacham & Pinard; George B. Adair; Columbia Engineering Works, a corporation; John E. Good, doing business as John E. Good Metal Works; F. J. Flajole and C. F. Barritt, copartners doing business as Standard Boiler Works; Charles H. Allmond and G. E. Ahlberg, copartners doing business as Charles H. Allmond & Company; Gorham Rubber Company, a corporation; Olympic Foundry Company, a corporation; Dunham, Carrigan & Hayden Company, a corporation; Henry Worthington, and Puget Sound Engine Works, Defendants in Error, which cause is numbered 1451 in your court, to the great damage of the said Title Guaranty & Trust Company of Scranton, Pennsylvania, plaintiff in error, as by their complaint appears.

And it appearing that the jurisdiction of the Circuit Court was not dependent entirely upon the opposite parties to the suit being aliens and citizens of the United States or citizens of different states, and that it is not a case arising under the patent laws or revenue laws or under the criminal laws of the United States or in admiralty, but that it arises upon a contract involving the construction and application of the statutes and laws of the United States, and there is drawn in question the jurisdiction of the Circuit Court that originally tried said case, and that the amount involved, exclusive of costs, exceeds the sum of one thousand dollars and amounts to the sum of nine thousand dollars, and over.

433 We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States at Washington, D. C., together with this writ, so that you have the same in the city of Washington in the District of Columbia on the 30th day of Sep-

tember, 1908, to be then and there held, that the record and proceedings aforesaid being inspected, the said United States Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 31st day of July, 1908.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the United States Supreme Court.

Justice of the United States Supreme Court.

434 We hereby acknowledge due, regular and timely service upon us of the foregoing writ of error.

H. T. GRANGER,
Attorney for Crane Company, Bates & Clark, B. Manke and John Johnston.

KERR & McCORD,
Attorneys for Pacific Engineering Co.

WARDALL AND WARDALL,
Attorneys for Davis & Buxbaum and Whiton Hardware Company.

ALLEN, ALLEN & STRATTON
& JAY C. ALLEN,

Attorneys for Lewis, Anderson, Ford Co. and Chesley Tow Boat Company.

McCLURE & McCLURE,
Attorneys for Marine Mfg. & Supply Co., Eyres Transfer Company, Sunde and Erland and Bowles Company.

IRA BRONSON AND
D. B. TREFETHEN,
Attorneys for Puget Sound Machinery Depot.

BENTON EMBREE,
Attorney for Vulcan Iron Works and King & Winge.

GEO. H. KING,
Attorney for George Broom.

WRIGHT & KELLEHER,
Attorneys for Frederick & Nelson.

S. H. STEELE,
Attorney for S. B. Hicks & Sons. Co.

A. A. ANDERSON,
Attorney for A. H. Holmstrom Iron Works Co.

FLUECK & BEBB,
Attorney for Eagle Brass Foundry.

EVERETT C. ELLIS,
Attorney for Washington Iron Works.

435

CUTTS & DORETY,

Attorneys for M. A. Berger & Company.

GRAY & STERN,

Attorneys for Westerman Iron Works, a Corporation; Schwabacher Hardware Company, a Corporation; Puget Sound Pattern Works, Eagle Iron Foundry, Meacham & Pinard, George B. Adair, Columbia Engineering Works, a Corporation; John E. Good Metal Works, Standard Boiler Works, Charles H. Almond & Company, Gorham Rubber Company, a Corporation; Olympic Foundry Company, a Corporation; Henry Worthington and the Puget Sound Engine Works, Inc., and for all Other Parties.

436 [Endorsed:] Original. No. —. In the Supreme Court of the United States. The Title Guaranty & Trust Company of Scranton, Penna., Plaintiff-in-Error, vs. The Crane Company, a corporation et al., Defendants in Error. Docketed No. 1451. United States Circuit Court of Appeals for the Ninth Circuit. Writ of Error. [Original]. Filed Aug. 6, 1908. F. D. Monckton, Clerk. Grave, Palmer & Murphy, Lowman B'l'd'g, Seattle, Wash., Att'ys for Plaintiff-in-Error.

Return to Writ of Error.

The Answer of the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

As within we are commanded, we certify, under the seal of our said Circuit Court of Appeals, in a certain schedule to this writ annexed, the record and all the proceedings of the plaint whereof mention is within made, with all things touching the same, to the Supreme Court of the United States, within mentioned, at the day and place within contained.

We further certify that a copy of this writ has been duly lodged for the within named defendants in error.

[Seal The United States Circuit Court of Appeals for the Ninth Circuit.]

By F. D. MONCKTON,
*Clerk U. S. Circuit Court of
Appeals for the Ninth Circuit.*

August 25, 1908.

437 We hereby acknowledge this 18th day of August, 1908,
due and regular service upon us of the attached citation and
due and regular service of the same upon our respective clients.

H. T. GRANGER,

*Attorney for Crane Company, Bates &
Clark, B. Manke, and John Johnston.*

KERR & McCORD,

*Attorneys for Pacific Engineering Co.
WARDALL AND WARDALL,*

*Attorneys for Davis & Busbaum and
Whiton Hardware Company.*

ALLEN, ALLEN & STRATTON,

*Attorneys for Lewis, Anderson, Ford
Co., and Chesley Tow Boat Company.*

McCLURE & McCLURE,

*Attorneys for Marine Mfg. & Supply Co., Eyres
Transfer Company, Sunde and Erland and Bowles
Company.*

IRA BRONSON &

D. B. TREFETHEN,

Attorneys for Puget Sound Machinery Depot.

BENTON EMBREE,

*Attorney for Vulcan Iron Works and
King & Winge.*

GEO. H. KING,

*Attorney for George Broom.
WRIGHT & KELLEHER,*

*Attorneys for Frederick & Nelson.
S. H. STEELE,*

Attorney for S. B. Hicks & Sons Co.

A. A. ANDERSON,

Attorney for A. H. Holstrom Iron Works Co.

FLUECK & BEBB,

*Attorneys for Eagle Brass Foundry.
EVERETT C. ELLIS,*

*Attorney for Washington Iron Works.
CUTTS & DORETY,*

Attorneys for M. A. Barger & Company.

LEOPOLD M. STERN,

*Attorney for Westerman Iron Works, a Corporation;
Schwabacher Hardware Company, a Corporation;
Puget Sound Pattern Works, Eagle Iron Foundry,
Meacham & Pinard, George B. Adair, Columbia
Engineering Works, a Corporation; John E. Good
Metal Works, Standard Boiler Works, Charles H.
Allmons & Company, Gorham Rubber Company,
a Corporation; Olympic Foundry Company, a Cor-
poration; Henry Worthington, and the Puget
Sound Engine Works, Inc., and for All Other
Parties.*

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In the Supreme Court of the United States.

No. —.

THE TITLE GUARANTY & TRUST COMPANY OF SCRANTON, PENNA.,
Plaintiff in Error,

vs.

THE CRANE COMPANY, a Corporation, et al., Defendants in Error.

Citation on Writ of Error.

UNITED STATES OF AMERICA, ss.:

To Crane Company, a Corporation; F. R. Bates and T. S. Clark, Co-partners Doing Business as Bates & Clark Company; B. Manke; James Johnston; Pacific Engineering Company, a Corporation; Whiton Hardware Company, a Corporation; L. W. Davis and J. H. Buxbaum, Co-partners Doing Business under the Firm Name of Davis & Buxbaum; Lewis, Anderson, Ford & Co., Inc., a Corporation; Chesley Tow Boat Company, a Corporation; The Marine Manufacturing and Supply Company, a Corporation; Eyres Transfer Company, a Corporation; Bowles Company, a Corporation; Sunde & Erland Company, a Corporation; Puget Sound Machinery Depot, a Corporation; The Vulcan Iron Works, a Corporation; J. T. King and A. Winge, Co-partners doing business under the name of King & Winge; George Broom; Frederick & Nelson, a Corporation; S. B. Hicks & Sons Company, a Corporation; A. H. Holmstrom Doing Business as A. H. Holmstrom Iron Works; James Tracy and John Tracy, Co-partners Doing Business as the Eagle Brass Foundry; Washington Iron Works Company, a Corporation; M. A. Barger, Doing Business as M. A. Barger & Company, a Corporation; Schwabacher Hardware Company, a Corporation; Westerman Iron Works, a Corporation; B. D. Bates and R. O. Fraser, Doing

440 Business under the firm name and style of Puget Sound Pattern Works; J. T. Fulmele, Doing Business under the Firm Name and Style of Eagle Iron Foundry; F. G. Meacham and W. J. Pinard, Co-partners Doing Business as Meacham & Pinard; George B. Adair; Columbia Engineering Works, a Corporation; John E. Good, Doing Business as John E. Good Metal Works; F. J. Flajole and C. F. Barritt, Co-partners Doing Business as Standard Boiler Works; Charles H. Allmond and G. E. Ahlberg, Co-partners Doing Business as Charles H. Allmond & Company; Gorham Rubber Company, a Corporation; Olympic Foundry Company, a Corporation; Dunham, Carrigan & Hayden Company, a Corporation; Henry Worthington and Puget Sound Engine Works, Inc.:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the City of Washington, in the District of Columbia, on the 30th day of Sept, 1908.

pursuant to an order allowing a writ of error filed and entered in the clerk's office of the United States Supreme Court, from a final judgment signed, filed and entered on the 10th day of June, 1908, in that certain suit, being Law Cause No. 1451, wherein the Title Guaranty & Trust Company of Scranton, Pennsylvania, a corporation, is appellant and plaintiff in error, and you and each of you are appellees and defendants in error, to show cause, if any there be, why the judgment rendered against said appellant and plaintiff in error in the writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph McKenna Justice of the United States Supreme Court, this 31st day of July, A. D. 1908, and of the Independence of the United States the one hundred and

441 thirty-third.

JOSEPH MCKENNA,

Justice of the United States Supreme Court.

Attest:

_____,
Clerk of the United States Supreme Court.

442 [Endorsed:] No. —. In the Supreme Court of the United States. The Title Guaranty & Trust Company of Scranton, Penna., Plaintiff in Error, vs. The Crane Company, a Corporation, et al., Defendants in Error. Docketed No. 1451. United States Circuit Court of Appeals for the Ninth Circuit. Citation on Writ of Error. Filed Aug. 24, 1908. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit. Graves, Palmer & Murphy, Lowman Bldg., Seattle, Wash., Att'ys for Plaintiff in Error.

Endorsed on cover: File No. 21,332. U. S. Circuit Court Appeals, 9th Circuit. Term No. 254. The Title Guaranty & Trust Company of Scranton, Pennsylvania, plaintiff in error, vs. The Crane Company, F. R. Bates and T. S. Clark, copartners as Bates & Clark Company, et al. Filed September 15th, 1908. File No. 21,332.

No. 67.

No. 21,332

FILED.

SEP 8 1910

JAMES H. McKENNEY

IN THE
SUPREME COURT
OF THE
UNITED STATES

THE TITLE GUARANTY & TRUST COMPANY
OF SCRANTON, PENNA., a corporation,

Plaintiff in Error,

vs.

PUGET SOUND ENGINE WORKS, INC., a corporation;
THE CRANE COMPANY, a corporation,
et al.,

Defendants in Error.

BRIEF OF PLAINTIFF IN ERROR

IN ERROR TO THE UNITED STATES CIR-
CUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT.

JAMES B. MURPHY and
C. H. WINDERS,

Attorneys for Plaintiff in Error.

M. M. RICHARDSON,
Of Counsel.

911 LOWMAN BUILDING
SEATTLE, WASH.



No. 21,332

IN THE
SUPREME COURT
OF THE
UNITED STATES

THE TITLE GUARANTY & TRUST COMPANY
OF SCRANTON, PENNA., a corporation,

Plaintiff in Error,

vs.

PUGET SOUND ENGINE WORKS, INC., a corporation;
THE CRANE COMPANY, a corporation,
et al.,

Defendants in Error.

BRIEF OF PLAINTIFF IN ERROR

IN ERROR TO THE UNITED STATES CIR-
CUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT.

JAMES B. MURPHY and
C. H. WINDERS,
Attorneys for Plaintiff in Error.

M. M. RICHARDSON,
Of Counsel.



IN THE
SUPREME COURT
OF THE
UNITED STATES

THE TITLE GUARANTY & TRUST COMPANY,
of Scranton, Penna., a corporation,
Plaintiff in Error,

vs.

PUGET SOUND ENGINE WORKS, a corporation; CRANE COMPANY, a corporation; OLYMPIC FOUNDRY COMPANY, a corporation; THE MARINE MANUFACTURING & SUPPLY COMPANY, a corporation; THE VULCAN IRON WORKS, a corporation; A. H. HOLSTROM, doing business as A. H. HOLSTROM IRON WORKS; BOWLES COMPANY, a corporation; PUGET SOUND MACHINERY DEPOT, a corporation; S. B. HICKS & SONS COMPANY, a corporation; GEORGE BROOM; WHITON HARDWARE COMPANY, a corporation; FREDERICK & NELSON, a corporation; WASHINGTON IRON WORKS, a corporation; JAMES TRACY and JOHN TRACY, co-partners doing business as THE EAGLE BRASS FOUNDRY; CHESLEY TOW BOAT COMPANY, a corporation; T. J. KING and A. WINGE, co-partners doing business under the

name of KING & WINGE; JAMES JOHNSTON; L. W. DAVIS and J. H. BUXBAUM, co-partners doing business under the name and style of DAVIS & BUXBAUM; SCHWABACHER HARDWARE COMPANY, a corporation; GORHAM RUBBER COMPANY, a corporation; PACIFIC ENGINEERING COMPANY, a corporation; SUNDE & ERLAND COMPANY, a corporation; B. D. BATES and R. O. FRASER, co-partners doing business under the firm name and style of PUGET SOUND PATTERN WORKS; J. G. MEACHAM and W. J. PINARD, co-partners doing business as MEACHAM & PINARD; DUNHAM, CARRIGAN & HAYDEN COMPANY, a corporation; M. A. BARGAR, doing business as M. A. BARGAR & COMPANY; WESTERMAN IRON WORKS, a corporation; F. J. FLAJOLE and G. F. BARRITT, co-partners doing business as STANDARD BOILER WORKS; CHARLES H. ALLMOND & G. E. ALILBERG co-partners as CHAS. H. ALLMOND & COMPANY; COLUMBIA ENGINEERING WORKS, a corporation; JOHN E. GOOD, doing business under the firm name and style of JOHN E. GOOD METAL WORKS; J. F. FUMELE, doing business under the firm name and style of EAGLE IRON FOUNDRY; LEWIS, ANDERSON, FORD CO., INC., a corporation; EYRES TRANSFER COMPANY, a corporation; F. R. BATES and T. S. CLARK, co-partners doing business under the firm name and style of BATES & CLARK COMPANY; B. MANKE; GEORGE B. ADAIR, and HENRY R. WORTHINGTON,

Defendants in Error.

STATEMENT.

This action is brought here by a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, upon a decree and judgment entered June 10th, 1908, affirming a judgment of the United States Circuit Court for the Western District of Washington, Northern Division, entered December 19th, 1906, in an action upon a contractor's bond conditioned for the construction of a vessel under a contract with the Government of the United States. The action was brought below under the Act of Congress of August 13th, 1894, (28 Stat. 278, as amended by the Act of February 24th, 1905, (33 Stat. 811).

The history of the case is as follows:

About February 17th, 1905, the Puget Sound Engine Works, Inc., a Washington corporation, entered into a written contract with the government of the United States for the construction and the delivery to it, free of all liens and claims, of the steamer Lieutenant Harris. On February 27, 1905, the Title Guaranty & Trust Company of Scranton, Pennsylvania, made, executed and delivered to the United States a bond in the sum of \$10,000, which bond ap-

pears in the record at page 32, conditioned that the said contractor would complete and deliver the vessel to the United States and pay for all labor and material used in the construction thereof. The contractor entered upon the construction of the vessel; and between the first day of March, 1905, and the twenty-first day of September, 1905, a large number of persons and concerns furnished material and labor to the contractor which was used in the construction of the vessel. There is no dispute as to the amounts due on these claims.

Charles H. Allmond & Company are among those claiming to have furnished materials, but the fact is that Charles H. Allmond & Company furnished certain drawings and patterns which did not enter into the construction of the vessel, but which were used for making and casting certain metal parts for the Lieutenant Harris. (Record, page 69.) The Puget Sound Patterns Works also furnished like drawings and patterns, which were used in shaping certain parts and castings which went into said vessel, but furnished no material which actually became a component part of the vessel. (Record, page 69.) These claimants contend that they furnished material within the meaning of the Federal Statute for the construction of the vessel and are therefore entitled to recover upon the contractor's bond the amount due them for such patterns and drawings.

The Chesley Tow Boat Company is among the claimants, and is asserting a claim for towing and wharfage of materials which were handled by it while en route to the plant of the Puget Sound Iron Works, where they entered into the construction of the Lieutenant Harris. (Record, page 69.) The Eyres Transfer Company also asserts a claim against the bond for drayage and cartage about the city of Seattle of certain materials which were intended for and afterwards used in the steamer Lieutenant Harris. (Record, page 70.)

Certain of the claims have been assigned. Shortly before the completion of the vessel the Puget Sound Engine Works, Inc., abandoned the work, and was adjudged a bankrupt, and the United States completed the vessel. (Record, pages 68, 75, 91.) At the time of the failure of the Puget Sound Engine Works the claims now asserted against the vessel remaining unpaid, this action was brought under said act of 1905 upon the bond to recover the amounts due, and judgment was rendered in favor of the plaintiff and the respective intervenors and against the bonding company for the full amount of each claim asserted. Because of the large number of complaints of intervention filed in the Circuit Court and their similarity, the parties entered into a stipulation diminishing the record to bring up to the Circuit Court of Appeals such complaints of intervention only as ex-

emplify the record on the various points raised and providing that the judgment shall be similar as to all claims, except as influenced by individual features shown by the record. (Record, pages 120, 156.) The complaint of the plaintiff and the four complaints in intervention shown by the record illustrate the various contentions of plaintiff in error, and we set forth the assignments of error which refer to the complaint and complaints of intervention before the court, omitting those not addressed to the complaints not here, because of the stipulation under which this court shall enter the same judgment in the cases not before the court as it enters in the cases here.

The Surety Company interposed a demurrer to the complaint and to each of the complaints in intervention, which demurrer raised the following questions (See Record, page 18):

1. That a contract between the government of the United States and a contractor for the construction of a vessel does not come within the purview or scope of the statute requiring the government to exact of the contractor a bond conditioned for the payment of labor and material, and therefore the claimants in this action could have no right of action thereon. This affects all claimants alike, and is the principal question that will be discussed upon this appeal.

2. That a complaint under that statute must either show upon its face that all claims against the surety and in favor of the United States have been paid, or that the United States is made a party, as the United States is a necessary party having a prior claim, unless its claim has been fully satisfied and discharged.

3. That it is incumbent upon each claimant, before he can assert a claim against such bond as the one in question, to apply by affidavit agreeable to the statute and procure a certified copy of the bond, and that this fact must be alleged and proven before the claimant is entitled to recover, which was not done in this case, except in two instances, to-wit: The Eagle Brass Foundry and M. A. Barger. (Record, page 160.) In these two individual instances the claimant did procure a certified copy of the bond, and alleged that fact in their respective complaints of intervention.

4. That although the bond was actionable in favor of other claimants, the Eyres Transfer Company and the Chesley Tow Boat Company, who furnished, respectively, cartage, towage and wharfage, and Charles H. Allmond & Company and the Puget Sound Pattern Works, who furnished patterns from which casting were made, did not perform labor or furnish material within the meaning of the Federal Statute.

The demurrers of the appellant and plaintiff in error to the complaint, and each of the complaints in intervention, were overruled by the court in one general order, which appears on page 25 of the Record, to which ruling an exception was duly preserved.

The appellant and plaintiff in error then answered to the complaint and the various complaints in intervention, and its answer was similar in each case, and in addition to the denials it set forth four affirmative defenses. The answer is found on pages 28 to 62 of the Record.

The first affirmative defense is that the bond was without consideration, raising two questions: (1) That the bond, not being required by statute, was voluntary in so far as the United States was concerned, and that no claim can be based upon the consideration between the surety and bankrupt, and in any event that it must be regarded for the United States only. (2) That the bond was executed after the execution and delivery of the contract and after the parties became bound to perform the contract. (Record, pages 28-33.)

The second affirmative defense raised one of the questions suggested by the demurrer; that is, that the claimants did not apply for and acquire in the manner provided by law, or at all, a copy of the bond before the commencement of the action, setting out af-

firmatively the failures to comply with the statute in that particular. (Record, pages 33, 34.)

The third affirmative defense raises again the question of the necessity of the United States as a party to the action, and sets forth facts and reasons why the United States should be made a party. (Record, pages 34, 35.)

The fourth affirmative defense raises the question that under the statutes of the State of Washington all persons furnishing labor or material to a vessel in its construction have a lien upon the vessel for the reasonable value or the contract price of such labor and material; that these claimants furnished services and material while the vessel belonged to the Puget Sound Engine Works, Inc., and that they stood by and failed to assert their lien against said vessel until it had become the property of and passed into the possession of the United States, and must be considered as having waived their right of lien, and having voluntarily given up securities to which the bonding company, upon paying its liability, was entitled, and by their said action have waived their right to recover upon the bond in question. (Record, pages 34 to 36.)

To each of these affirmative defenses the plaintiff and each of the intervenors demurred on the ground of insufficient facts, and their demurrers as to each

of these defenses were sustained and a general order entered sustaining all demurrers to said affirmative defenses and each of them, which order appears in the record at page 66, to which order an exception was regularly taken.

There being no question as to the amounts of the various claims, a stipulation was filed setting forth an agreed state of facts, so far as it is necessary to do so under the issues raised by the pleadings. (Record, pages 67-71.) A hearing was had and the court entered a judgment against the bonding company and in favor of each of the claimants, including the claims of Charles H. Allmond & Company, Puget Sound Pattern Works, Eyres Transfer Company and the Chesley Tow Boat Company (Record, pages 78-82), to which judgment exceptions were properly and timely taken. (Record, page 82.) The agreed statement of facts sets out more fully than the complaints of intervention the character of the claims for drawings and patterns, towage and cartage, and also shows the relative dates of the execution of the contract and the bond, and appears on pages 67 to 71 of the record.

The plaintiff and each of the intervenors filed cost bills, and each included in his or its cost bill the statutory attorney fee of ten dollars. Exceptions were duly filed to this item upon the ground that there should be but one attorney fee taxed against

the bonding company. (Record, pages 86-89.) The objections were sustained by the clerk and an appeal was taken to the court, and the court overruled the exceptions and taxed, among other costs in favor of the plaintiff and each intervenor and against the bonding company, a statutory attorney's fee of ten dollars (Record, pages 89-90), to which ruling exception was duly and timely taken. The plaintiff in error claims that the judgment was erroneous in that it rendered any judgment whatsoever against the bonding company, and that the court erred in rendering judgment in favor of the pattern makers and the transportation companies, and that it committed error in entering an order allowing the attorney's fee of ten dollars to each claimant. Upon appeal to said writ of error from the Circuit Court of Appeals for the Ninth Circuit the judgment was affirmed. To correct such judgment of affirmance this writ is sued out.

The specifications of error relied upon separately stated are as follows: (As hereinbefore pointed out by stipulation of the parties, it is agreed that this court shall enter the same judgment in the cases not before the court as it enters in the cases here, and the assignments of error herein pointed out go only to the cases covered by the stipulation of the parties, and upon determination of which a like judgment is to be entered in each of the cases not here.)

I.

The court erred in affirming the judgment of the Circuit Court in any particular and in every particular in which said judgment was affirmed and in not reversing the same as to the claims of each and every claimant.

II.

The court erred in holding that the property in the vessel in question passed to the United States as the parts thereof were completed.

III.

The court erred in holding that the work in question and the construction of the vessel was a public work, within the meaning of the act of February 24, 1905, as it appears in Volume 33 of the United States General Statutes, page 811, or that it was a public work within the meaning of any statute of the United States.

IV.

The court erred in holding that the United States was not a necessary party to the action and in holding that whether or not the United States is a proper party is not put in issue.

V.

The court erred in holding that the application for and procurement of a certified copy of the bond sued upon was not a necessary prerequisite to the institution of the above entitled action in the Circuit Court.

VI.

The court erred in holding that the Circuit Court had jurisdiction of the action regardless of the fact that a certified copy of the bond sued upon had not been procured prior to its institution.

VII.

The court erred in holding that the claims of labor and material were assignable and that the assignee of such claims had a right of action thereon.

VIII.

The court erred in affirming the action of the lower court in entering an order overruling the separate demurrers of the plaintiff in error to the complaint of Crane Company and to the separate complaints in intervention of the Olympic Foundry Company, a corporation; The Marine Manufacturing and Supply Company, (a corporation); A. H. Holstrom, doing business as A. H. Holstrom Iron Works; Bowles Company (a corporation); Sunde and Erland Company (a corporation), Puget Sound Machinery Depot (a corporation), The Vulcan Iron Works (a corporation), Pacific Engineering Company, (a corporation), S. B. Hicks & Sons Company (a corporation), George Broom, Whiton Hardware Company (a corporation), Frederick & Nelson (a corporation), Washington Iron Works Company (a corporation), James Tracy and John Tracy, co-partners doing business as The Eagle Brass Foundry.

dry, Chesley Tow Boat Company (a corporation), T. J. King and A. Winge (co-partners doing business under the name of King & Winge, James Johnston, L. W. Davis and J. H. Buxbaum, co-partners doing business under the firm name of Davis & Buxbaum, Sewabacher Hardware Company (a corporation), Gorham Rubber Company (a corporation), B. T. Bates and R. O. Fraser, co-partners doing business as Puget Sound Pattern Works, J. G. Meacham and W. J. Pinard, co-partners doing business as Meacham & Pinard, Dunham, Carrigan & Hayden Company (a corporation), M. A. Barger, doing business as M. A. Barger & Company, Westerman Iron Works (a corporation), F. J. Flajole and G. F. Barritt, co-partners doing business as Standard Boiler Works, Charles H. Allmond and G. E. Ahlberg, co-partners doing business as Charles H. Allmond & Company, Columbia Engineering Works (a corporation), John E. Good, doing business under the firm name and style of John E. Good Metal Works, J. T. Fulmele, doing business under the firm name and style of Eagle Iron Foundry, Lewis, Anderson, Ford Co., Inc. (a corporation), Eyres Transfer Company (a corporation), F. R. Bates and T. S. Clark, co-partners doing business under the firm name and style of Bates & Clark Company, B. Manke, George B. Adair, and Henry R. Worthington, and the court erred in affirming the action of the Circuit Court in

overruling each of the demurrers of the plaintiff in error to each of said complaints.

IX.

The court erred in affirming the judgment of the Circuit Court in entering an order sustaining the demurrers of plaintiff interveners in that court to the first affirmative defense set out in the answer of this plaintiff in error and the court erred in affirming the action of the Circuit Court in sustaining the demurrers of the said plaintiffs and interveners to the second cause of action set out in said answer.

X.

The court erred in affirming the action of the lower court insustaining the several demurrers of the plaintiff and interveners to the third affirmative defense set out in said answer.

XI.

The court erred in affirming the action of the Circuit Court in sustaining the several demurrers of said plaintiff and interveners to the fourth affirmative defense set out in said answer.

XII.

The court erred in approving and affirming the fifth Finding of Fact of the said Circuit Court.

XIII.

The court erred in approving and affirming the sixth subdivision of said Findings, that Charles H.

Allmond & Company furnished material and did work upon said vessel.

XIV.

The court erred in approving and finding that the Chesley Tow Boat Company did any work, or furnished any material upon said vessel.

XV.

The court erred in approving in part the finding that the Eyres Transfer Company did any work or furnished any material in the construction of said vessel.

XVI.

The court erred in approving the first Conclusion of Law made by the Circuit Court.

XVII.

The court erred in approving the second Conclusion of Law made by the Circuit Court.

XVIII.

The court erred in approving the third Conclusion of Law made by the Circuit Court.

XIX.

The court erred in approving the fourth Conclusion of Law made by the said Circuit Court.

XX.

The court erred in entering a judgment in favor of each of the defendants in error, and against the plaintiff in error for any sum whatsoever.

XXI.

The court erred in overruling the exception of the plaintiff in error to the cost bill of the defendants in error, and in allowing each of the claimants a statutory attorney's fee of \$10.00.

BRIEF OF THE ARGUMENT.

A number of the questions for review by this court were raised in the trial court during the progress of the action in several ways; some upon the demurrer to the complaint, and again by an affirmative defense, and again upon the facts. Exceptions were taken to the ruling of the court at each time so that the surety company seeks by a number of exceptions to have reviewed the same point, and we believe it will best serve the purpose of the brief to discuss the points in the order of their importance and but once, rather than to discuss the sufficiency of the complaints and complaints of intervention, then the sufficiency of the answers and the sufficiency of the judgment, and will endeavor to present the points in the following order:

1. Does a contract for the construction of a vessel come within the purview of the statute under which the action was instituted?

2. Was the United States a necessary party?

3. Must a party seeking to institute an action upon such a bond as the one in question apply by affidavit and procure from the proper authorities a certified copy of the bond?

4. Is the surety upon such a bond liable for cartage, towage and wharfage, and patterns prepared for castings?

5. Is a claim against such a bond as the one in question a personal privilege in such a sense as not to be assignable?

6. That the bond was without consideration, first, because the bond was not required by statute or contract, and, second, because the parties were bound by the contract before the bond was executed.

7. Is it proper to tax in this one action thirty-nine different statutory attorney fees?

I.

The first point which we desire to discuss, to-wit, does the contract for the construction of a vessel come within the purview of the statute under which this action is brought, relates alike to all the claims asserted against the bond, and was raised and discussed by the demurrer interposed by the bonding company to the complaint and the several complaints in intervention, again by the plaintiff and inter-

venors' respective demurrers to the first affirmative defense in the answer of the bonding company, and again on the facts, and is suggested by Assignments of Error I, II, III, IV, V, VIII, IX, XIII, XIV, XV, XVI, XVII, XVIII, XIX and XX, as set out in this brief, which assignments of error call up for review the propriety of overruling the demurrer of the bonding company to the several complaints, and the propriety of the court sustaining the demurrers to the said first affirmative defense, and the propriety of the trial court entering any judgment in favor of any party and against the bonding company.

SCOPE AND PURPOSE OF THE ACT OF 1894 AS AMENDED.

The unquestioned purpose of Congress in the passage of the Act of August 13, 1894 (28 *Stat.* 278), as amended by the Act of February 24, 1905 (33 *Stat.* 811), requiring that all persons entering into a formal contract with the United States, for the construction of "*public buildings*" or the prosecution and competition of any "*public work*," should furnish a bond conditioned both to save the United States harmless and to pay laborers and material-men, was to protect, first, the United States, and,

second, to protect laborers and materialmen, who had no right of lien by reason of the building or work being upon the property of or belonging to the sovereign, by giving to them a right of action on such bond, the object of Congress, as to materialmen and laborers, as uniformly held by the courts, being to substitute the bond for the building or public work, thus affording to them the same rights as against the bond as they were given by the statutes of the several states under the General Mechanic Lien Laws.

U. S. ex rel. Hill vs. American Surety Co., 200 U. S. 197; 50 Law. Ed. 437.

U. S. F. & G. Co. vs. U. S., 191 U. S. 416; 48 Law. Ed. 242.

U. S. ex rel. Sica vs. Kimpland, 93 Fed. 403.

American Surety Co. vs. Laurenceville Cement Co., 110 Fed. 717.

U. S. vs. Burdgorf, 13 D. C. Appeals 506.

U. S. vs. City Trust & Safe Deposit Co., 21 D. C. Appeals 369. 123 Opinions Atty. Genl. 74.

In *U. S. F. & G. Co. vs. U. S.*, 191 U. S. 416, the Supreme Court, discussing the purpose of this statute, says:

“This covenant, however, is inserted for an entirely different purpose from that of securing to the government the performance of the con-

tract for the construction of the building. In as much as neither the contractor nor his sub-contractor can secure themselves by a mechanics' lien upon the proposed building, the government, solely for the protection of the latter, requires a covenant for the prompt payment of his claims."

In *U. S. vs. The City Trust & Safe Deposit & Security Company*, 21 App. D. C. 369, the Court of Appeals of the District of Columbia says:

"The practical effect of the statute," as we have had occasion heretofore to say, "is to confer a special lien in favor of such persons and to substitute this bond in the place of the public building upon which that lien is charged."

In *U. S. ex rel. Hill vs. American Surety Company, supra*, the Supreme Court speaks of the scope of the Act as follows:

"As against the United States, no lien can be provided upon its public buildings or grounds, and it was the purpose of this Act to substitute the obligation of a bond for the security which might otherwise be obtained by attaching a lien to the property of an individual. The purpose of the law is, as its title declares: 'For the protection of persons furnishing materials and labor for the construction of public works.' If literally construed, the obligation of the bond might be limited to secure only persons supplying labor or materials directly to the contractor, for which he would be personally liable. But we must not overlook in construing this obligation the manifest purpose of the statute to require that material and labor actually contributed to the construction of a public building shall

be paid for, and to provide a security to that end."

This late expression from the Supreme Court is in harmony with the decisions of the federal and state courts construing similar statutes. There are to be found in some of the decisions of the federal courts expressions to the effect that the courts are not bound to the same strict construction of this Act as they would be under the different mechanic lien statutes of the several states, but the unquestioned purpose of Congress, in the passage of this Act, as uniformly construed by the government and by the courts, was to afford relief to the materialman and laborer only in those cases in which, by reason of the public ownership of the sovereign, he is deprived of rights accorded to him in case of private ownership.

PUGET SOUND ENGINE WORKS' CONTRACT.

The contract of the Puget Sound Engine Works, Inc., was neither for the erection of a "*public building*" or the prosecution or completion of any "*public work*," and further, title to the vessel under the contract not passing to the government until its completion, delivery and acceptance, the laborer and ma-

terialman, under the statutes of the State of Washington, was amply protected by its lien laws, hence the claims sought to be enforced here are not only without the terms of the Act, as we will hereinafter point out, but outside of the very scope and intent of Congress in its passage.

The contract is found on pages 29 to 32 of the record. Article 2 thereof provides that facilities for examination of the labor and materials shall be given to inspectors appointed by the United States. Article 3 provides for payments to be made as the work progresses, if, in the opinion of the inspector, the work is satisfactory. Article 4 provides that the part of the vessel completed and paid for under the method of partial payment shall become the property of the United States; that section also provides that the shipbuilding company shall be responsible for its proper care until its delivery and acceptance by the United States. Article 9 provides for the annulment of the contract by the United States under certain conditions. Article 1 provides for completion and delivery, free from liens and incumbrances. Articles 2, 3 and 7 also provide for certain tests, and that an inspection shall be made before the vessel will be accepted by the United States. Article 7 provides for full payments only after such acceptance.

Mr. Justice Matthews, in the case of *Clarkson vs. Stevens*, 106 U. S. 505, 27 Law. Ed. 139, speaking

for the Supreme Court of the United States, held that, under a contract with the identical conditions contained in the contract with the Puget Sound Engine Works, title to a vessel did not pass to the United States Government until trial tests were completed and the vessel delivered to and accepted by the United States Government.

In this case the contract contained the following conditions:

“It was also agreed that the Secretary of the Navy should appoint some person, whom Stevens should admit within his establishment for building said vessel, whose duty it should be to receive and receipt for, on account of the Navy Department, all materials delivered therein for constructing said steamer; which materials, when so received and receipted for, should be distinctly marked with the letters ‘U. S.’ and should become the property of and belong to the United States; and it should be his further duty to certify all accounts, presented and certified by Stevens, for materials and labor, which should form the evidence on which payments should be made; but the authority of such inspecting officer, it was understood, should not extend to a right to judge of the quality or fitness of the materials or workmanship, but merely as to the cost thereof; ‘It being understood,’ the contract proceeds, ‘that the quality and fitness thereof, with other matters concerning the performance of the contract, are to be inspected and determined in the manner hereinafter provided for.’

It was thereupon further stipulated that before the final payment for the said war steamer

should be made, a certificate should be rendered to the Navy Department, that, in her construction, armament and equipment, all the provisions of the contract had been fully performed. * * * Payments were to be made, from time to time, upon bills certified by Stevens and the agent of the United States, for not less than \$5000.00 each. * * * It was further provided, that when said Stevens should have fully completed the said war steamer, and when she should have been duly delivered to and received by the agent of the United States, according to the terms of the contract, the full amount of the price remaining unpaid and to become due when the said war steamer should be fully completed and accepted, was required to be paid."

The contention in this case was that under such contract title to the vessel had passed to the United States Government as payments were made and the work was completed.

In the course of his opinion the learned Justice, in holding that title did not, by reason of the conditions of the contract, pass to the government, among other things said:

"Much stress is laid, in argument, upon that provision of the contract which required all materials received at the yard for use in constructing the steamer to be distinctly marked with the letters U. S., and declared that they should become the property of and belong to the United States. * * * There are two other provisions of the contract, which seems to us conclusive of the question and, in a sense, adverse to the construction of the plaintiffs in error.

The first of these is that which required Stevens to execute and deliver a mortgage, in lieu of other security, for the faithful performance of the contract on his part, on all the land, docks, wharves, slips and all their appurtenances belonging to and embraced within the establishment at Hoboken, New Jersey, at which the war steamer was to be constructed, with power to the mortgagee to enter upon and sell the same in case of failure on the part of Stevens to fulfill his part of the contract, or so much thereof as should be necessary to complete any deficiencies on his part.

The taking of this security, as an indemnity to the United States, assumes the anticipated possibility that the failure might be total, so that the vessel, when offered for delivery, might be altogether rejected. And it does not detract from the force of this conclusion that the alternative provides for completing deficiencies, if they should prove to be remedial; for, in that case, the United States, at its option, might accept the vessel, thus becoming invested with the title, and make good its deficiencies out of this security.

The other feature of the contract, which corroborates this view, is that which provides that final payment for the steamer shall be made only upon the certificate of examiners, to be appointed for that purpose, that in her construction, armament and equipment all the provisions of the contract have been fully performed and completed, which requires that the steamer shall be fully completed and delivered at the Navy Yard at Brooklyn, and fixes the gross amount which is to be paid for it when fully completed, delivered and accepted. The fact that advances are to be made in the meantime is expressly stated to be in consideration of the security to

be given by Stevens for the faithful performance of his contract, and that compensation for his time and services must be wholly deferred until the final completing and delivery of the vessel.

It is thus apparent, as we think, from these stipulations that the vessel was in all respects to be at the risk of the builder until, upon its completion, the United States should accept it, upon final examination and certificate, as conforming in every particular with the requirements of the contract, and answering the description and warranty of an efficient steam battery for harbor defense, shot and shell proof."

The Circuit Court of Appeals for the Sixth Circuit, in construing a similar statute, announced the same rule.

John B. Ketcham, 2d, 97 Fed. 872.

See opinions of Atty. Gen. Moody of Aug. 6, 1906 (*infra*), in which the form of contract in question was construed as not passing title of vessel to U. S. until acceptance.

The rule is also announced in

Benjamin on Sales, 7th Ed., page 298.

U. S. vs. Ollinger, 55 Fed. 959.

Yukon River St. Co. vs. Grotto, 69 Pac. 252 (Cal.).

William vs. Jackson, 16 Gray. 514.

Green vs. Hull, 1 Houst. 506.

West Jersey Ry. Co. vs. Trenton Car Co., 32 N. J. Law 517.

Etna vs. Treat, 15 Ohio 585.

Andrews vs. Durant, 11 N. Y. 35; 62 Am. Dec. 55.

S. H. Hawes & Co. vs. Wm. R. Trigg Co. et al., 65 S. E. 538.

Title to the vessel not passing to the United Statets until delivery and acceptance by it, then, under section 5953 Ballinger's Annotated Codes and Statutes of the State of Washington, as amended by the laws of 1901, page 21, the plaintiff and intervenors herein had a right of lien upon the vessel.

Said Act reads as follows:

An Act relating to liens upon steamers, vessels and boats, their tackle, apparel and furniture, and amending section 5953 of Ballinger's Annotated Codes and Statutes of the State of Washington. Laws 1901, page 21.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 5953 of Ballinger's Annotated Codes and Statutes of Washington be and the same is hereby amended to read as follows: Section 5953. That all steamers, vessels and boats, their tackle, apparel and furniture are liable:

1. For service rendered on board at the request of, or under contract with their respective

owners, charterers, masters agents or assignees.

2. For work done or material furnished in this state for their construction, repair or equipment at the request of their respective owners, charterers, masters, agents, consignees, contractors, sub-contractors, or other person or persons having charge in whole or in part of their construction, alteration, repair or equipment; and every contractor, builder, or person having charge, either in whole or in part, of the construction, alteration, repair or equipment of any steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of this chapter, and for supplies furnished in this state for their use, at the request of their respective owners, charterers, masters, agents or consignees, and any person having charge, either in whole or in part, of the purchasing of supplies for the use of any such steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of this chapter.

The Circuit Court of Appeals for the Fifth Circuit and a number of the Circuit Courts have also construed this Act as not to confer rights upon a railroad company for transporting materials, the decision being based upon the ground that a railroad company as a common carrier under general principles of law had a lien, hence the purpose sought to be accomplished by the Act not applying, they had no right of action on the bond.

United States vs. Hyatt et al., 92 Fed. 442;
34 C. C. A. 445.

American Surety Co. vs. Laurenceville Cement Co., 110 Fed. 717.

U. S. ex rel. Laughlin Co. vs. Morgan, 111 Fed. 474.

Laughlin Co. vs. American Surety Co., 114 Fed. 627.

Defendants in error having a right of lien, being fully protected thereby, are wholly without the scope and intent of the Act outside of any question of estoppel. However, by reason of the facts alleged in the fourth affirmative defense interposed by plaintiff in error, if any right of action on its bond ever existed in favor of the claimants, they are now clearly estopped from asserting any claim as against the bond.

The record shows that the Puget Sound Engine Works, Inc., prior to the institution of this action, was adjudged a bankrupt.

Under section 3466 Revised Statutes of the United States (Compiled Statutes, p. 2314), claims due the United States in such cases are given preference over all other claims.

In re Stover, 127 Fed. 394.

Smith vs. U. S., 92 U. S. 618.

In re Huddell, 47 Fed. 206.

U. S. vs. Barnes, 31 Fed. 705.

In re Strassburger, 4 Wood 558; Fed. c. 13.

Bayne vs. U. S., 93 U. S. 643.

Note 29 L. R. A. 226.

U. S. vs. McGee et al., 171 Fed. 209.

Title Guaranty & Surety Co. vs. Guarantee Title & Trust Co., 174 Fed. 385.

And the mere fact that the government might hold collateral or security does not require it to resort thereto before enforcing its direct remedy.

In re Stover, 127 Fed. 396.

Chemical National Bank vs. Armstrong, 59 Fed. 375.

Smith vs. U. S., 92 U. S. 618.

Merrill vs. National Bank, 173 U. S. 140; 43 Law. Ed. 640.

Childs vs. N. P. Carlston Co., 76 Fed. 86.

Doe vs. N. W. Coal & Trans. Co., 78 Fed. 62.

Wheeler vs. Walton, etc., Ry. Co., 72 Fed. 967.

Levey Bros. vs. Chicago National Bank, 42 N. E. 131.

Storey Equity Jurisprudence, Sec. 614.

Further, if the surety pays the debt of the government, it is entitled to be subrogated to its preference right.

Beaston vs. Delaware Bank, 12 Pet. 102.

Hunter vs. U. S., 5 Pet. 172.

Field vs. U. S., 9 Pet. 182.

In re Huddell, 47 Fed. 206.

U. S. vs. Barnes, 31 Fed. 705.

Federal Cases, vol. 7843, 7731, 9682, 17668.

Under the rule announced by the authorities cited, the defendants in error, by a failure to assert their right of lien upon the vessel, have deprived plaintiff in error of all rights to which it was entitled by reason of the priority of the claim of the United States against the property of the Puget Sound Engine Works, Inc., and after standing by and failing to secure themselves in the manner provided by statute, they should now, under every principle of equity, certainly be held to be estopped from asserting a claim against plaintiff in error upon its bond after all of the property of the boat building company has been dissipated and all rights to be subrogated to the whole thereof as surety to the United States has been lost.

CONTRACT NOT ONLY WITHOUT SCOPE OF
THE ACT, BUT ALSO WITHOUT ITS
EXPRESS TERMS.

It will be conceded that, if relator has no right of action under the statute, the Circuit Court would not have jurisdiction of the cause of action set up in plaintiff's complaint, and, further, that, as a common law bond, the plaintiff and intervenors herein would have no right of action against the surety company, as it belongs to and is the property of the United States, and, further, that no suit could be brought on it by any beneficiary under it in the name of the United States for his benefit unless some federal statute authorizes it.

The only statute upon which the action could be based would be the one upon which this action is planted, being the Act of August 13, 1894, as amended by the Act of February 24, 1905. This Act is entitled "An Act for the protection of persons furnishing materials and labor for the construction of public works." The Act provides that any person entering into any formal contract with the United States for the construction of any "*public building*" or the prosecution or completion of any "*public work*"

shall be required to execute the usual bond, etc., giving materialmen and laborers a right of action thereon, and it is clear from this statute that this suit cannot be maintained under its provisions unless the bond sued on was given to secure the performance of a contract for the construction of a "*public building*" or the prosecution and completion of some "*public work*."

Under the authorities hereinbefore cited the vessel did not become the property of the United States until acceptance by it, and if we are right in this the contract could not under any rule of construction be construed to be one for the prosecution and completion of any public work.

The question as to whether or not the construction of a vessel under any conditions would be the prosecution of a public work within the meaning of this statute has been the subject of consideration by the Attorney General's office of the United States from the administration of Attorney General Griggs to the present time. The learned attorneys occupying the office of Attorney General of the United States have uniformly construed such act as not to embrace vessels being constructed for the United States.

The Supreme Court of Appeals of Virginia has given a like construction to this statute in two late decisions, viz., *Penn Iron Company, Ltd., vs. William*

R. Trigg, 56 S. E. 329, and *S. H. Hawes vs. Wm. R. Trigg Co. et al.*, 65 S. E. 538. This question was also considered by the District Court for the District of New Jersey in the case of *U. S. vs. Perth Amboy Shipping Co.*, 137 Fed. 689. That court, while indicating a view contrary to that announced by the Supreme Court of Appeals of Virginia and by the Attorney General's office, however, indicated doubt of the view expressed and did not directly pass upon the question.

Judicial expressions as to the scope of the term "public work" are few. The term is defined in the Century Dictionary, page 4831, as follows:

"Public works include all fixed works constructed for public use as railways, docks, canals, water works, roads, etc.; more strictly military and civil engineering works constructed at the public cost."

The term is defined in 23 *Am. & Eng. Encyc. of Law*, 2nd Ed., page 459, as follows:

"This term includes all fixed works constructed for public use as railways, docks, canals, water works, roads, etc."

In *United States vs. Ollinger*, 55 Fed. 959, the court in construing the Act of Congress of August 1, 1892, known as the Eight Hour Law, in passing upon the question as to whether or not two barges being constructed for the United States were the property

of the Government before delivery and whether or not they were public works within the meaning of the statute, says:

“In my opinion, a statement of the facts is alone sufficient to show that the Act of Congress under which this prosecution is sought to be maintained has no application to the case. It is doubtful whether the defendant could ever be considered a contractor. If a contractor, he was a contractor to furnish to the Government of the United States two barges, to be delivered within 40 days from the making of the contract, which, if built according to certain specifications furnished him, were to be purchased by the government from him. The barges were his, and were to be his until the government purchased them. They might or might not become the property of the government. The transfer of title to them depended upon conditions which could not be determined until the barges were completed. It is clear to me that the building of the barges was in no sense a part of the public works; no more so than the mining of coal contracted to be furnished to the navy and marine service of the United States according to specifications as to quantity and quality, or the furnishing under contract with the government of the United States for lumber and brick to be used in building quarters at Mt. Vernon barracks for officers or soldiers or any other public use, according to specifications as to kind, quality and quantity. It would hardly be contended that the mining of such coal, the sawing of the lumber, or making the bricks, would be public works in contemplation of the Act of Congress, or that the laborers engaged in the work of mining and in making the lumber and bricks were the laborers whose

services and employment Congress has undertaken to regulate and limit. I fail to see any difference in principle in the cases mentioned and that under consideration."

That the term "public works" includes only fixed works and does not include a sea-going vessel is also held by the courts of Michigan, Minnesota and Virginia and has been the uniform construction of the term adopted by the government.

Ellis vs. Grand Rapids, 123 Mich. 567; 82 N. W. 244.

Winters vs. Duluth, 82 Minn. 130; 84 N. W. 788.

Penn Iron Works vs. William R. Trigg, 56 S. E. 329.

23 *Opinions of Attorney General*, 174.

20 *Opinions of Attorney General*, 454.

Opinion of Solicitor General Hoyt, approved by Attorney General Moody, dated August 3, 1906.

Opinion of H. M. Hoyt, acting Attorney General, dated August 4, 1906.

While these opinions of the Attorney General are not cited as controlling, they should be regarded as in a sense binding upon the United States as official acts in the course of duty and as controlling the intention of the contracting parties as well as

being entitled to consideration by reason of the acknowledged ability of the learned attorneys occupying the office of Attorney General of the United States.

Attorney General Griggs, in the opinion referred to in construing the original act of 1894, in an opinion reported in volume 23, Opinions of the Attorney General, page 174, says:

“The act in question provides as follows:

“That hereafter any person or persons entering into a formal contract with the United States for the construction of any public building, or the prosecution and completion of any public work, or for repairs upon any public building or public work, shall be required before commencing such work to execute the usual penal bond, with good and sufficient sureties, with the additional obligations that such contractor or contractors shall promptly make payments to all persons supplying him or them with labor and materials in the prosecuting of the work provided for in such contract,” etc. * * * * *

“I do not think the contract for the construction of a naval vessel, made in such form as I have referred to, is within the act of August 13, 1894. The contracts there referred to relate to the construction of public buildings and the prosecution and completion of public works. The object of this act was to afford a better method for enforcing against the contractor the claims of laborers and materialmen who had done work or furnished material upon property actually belonging to the United States, such as public buildings, which could only be erected upon land to which the United States had acquired a

complete title — fortifications, river and harbor improvements, and such other things as are commonly understood under the designation of “public works.” Of course, no mechanic’s or laborer’s lien would attach, by operation of any state statute, to property belonging to the United States on account of work done or material furnished for improvements thereon. The statute of 1894 intended, in a measure, to remedy the defect in the means of collection at the disposal of laborers and materialmen against contractors upon such works. No such reason applies to cases of the construction of a specified article not attached to soil, the title of which is in the United States, but which is a mere movable article, the whole title to which remains in the contractor until its completion and acceptance by the government. I assume it to be correct to say that if a state law authorized a lien for labor or materials furnished in the construction of a vessel under this form of contract, it would not be void or unenforceable because the vessel was in process of construction for the United States, the property to the same not yet having passed to the government, and such liens could therefore be effectively enforced.” * * * * *

This opinion has been followed by the government subsequent to that date and plaintiff in error by reason of the numerous opinions following that of Attorney General Griggs had a right to rely upon the construction therein given. On August 3, 1906, the Honorable H. M. Hoyt as solicitor general, rendered an opinion to the Secretary of the Navy, which opinion was approved by Mr. Justice Moody, then Attorney General of the United States,

in which the opinion of Attorney General Griggs and the opinions following it were approved. This opinion had to do with the construction of the act of August 1, 1892, relating to the hours of service of laborers and mechanics employed upon public works of the United States, etc. In the course of his opinion the learned Solicitor and Attorney General said:

“Your letter of July 23 submits the question whether the act of August 1, 1892, entitled “An Act relating to the limitations of the hours of daily service of laborers and mechanics employed upon the public works of the United States and of the District of Columbia” (27 Stat. 340), applies to labor under contract for the construction of naval vessels. The act provides:

That the service and employment of all laborers and mechanics who are now or may hereafter be employed by the Government of the United States, by the District of Columbia, or by any contractor or subcontractor upon any of the public works of the United States or of the said District of Columbia. * * *

The question therefore is, in effect, whether the phrase “public works of the United States” as used in the act of August 1, 1892, comprehends vessels under construction for the navy by contract with builders at private establishments over which the government has no executive control or supervision. It seems that various vessels are under construction in accordance with the requirements of the act of August 3, 1886 (24 Stat. 215), and as authorized by different annual appropriation acts under the heading “Increase of the Navy”; and contracts in the usual form, postponing acceptance of the vessel and complete title in the government until final delivery, have

accordingly been made for the construction of a number of such vessels in private establishments of shipbuilders.

It was held by Attorney General Miller (20 Op. 454) that the act of 1892 does not apply to the case of a contract for furnishing certain materials to the government for use in the construction and equipment of public buildings. In another opinion (id. 463) Mr. Miller considers the case of laborers and mechanics employed by the Quartermaster's Department of the Army upon public works, and also of all other laborers and mechanics employed in the Quartermaster's Department performing the usual and ordinary service of the character. He held that the law applies generally and without limitations to "public works" as to laborers and mechanics in the direct employment of the government and of the District of Columbia; and that the limitations as to *public works* applies only to such persons as are in the employ of contractors and subcontractors. That case, however, did not at all involve employment under contractors or subcontractors.

Mr. Griggs, construing the act of August 13, 1894 (28 Stat. 278), "for the protection of persons furnishing material and labor for the construction of public works," held that that act does not refer to contracts for the construction of naval vessels. * * * * *

Undoubtedly "public works" is a phrase of rather wide signification and it has not been precisely and fully defined.

As shown, Mr. Miller and Mr. Griggs applied it to public buildings, and Mr. Griggs to river and harbor improvements. (*Cf. United States vs. Jefferson*, 60 Fed. Rep. 736).

In 20 Op. 454, a timber dry dock was characterized as "a valuable and permanent improvement of real estate belonging to the United

States," and it was held that, being solely for the use and benefit of the United States, it was "to be regarded as one of the 'public works of the United States' under this eight-hour law."

The term "public works" is defined as all fixed works contracted for public use, as railways, docks, canals, water works, roads, etc., citing Century Dictionary. (*Ellis vs. Grand Rapids*, 82 N. W. 244, 123 Mich. 567).

(See also *Winters vs. Duluth*, 82 Minn. 127.)

The titles of statutes and subheadings thereof are not controlling, but they are often significant and persuasive. Besides other instances which might be given in this matter, consider the naval appropriation act of 1905 (act March 5, 1905, 33 Stat. 1092, 1101, 1104, 1105, 1110),—there are various specific appropriations for "public works" under the secretary, under the different bureaus and under the marine corps, while now construction of vessels by contract or in navy yards is authorized under the heading "Increase of the Navy." The act immediately following is the river and harbor act of that year (28 Stat. 1117), and is technically entitled "An Act making appropriations for the construction, repair and preservation of certain *public works* on rivers and harbors, and for other purposes."

By this it is suggested that the term "public works" cannot be restricted to the conception of a fixed thing, land and structures thereon, for river and harbor acts not only provide for "repairs to breakwater," for example, but also "for improving said river in accordance with the project submitted," etc., which might include dredging alone, substantially, and the mere deepening of a channel. In such a case the paramount control by the United States over the marine belt, harbor areas and navigable waters is akin, in the interest created and in its permanence and completeness, to a title to real estate and ownership

of fixed structures. But it is also true that ordinarily harbor and channel improvements by dredging and deepening involve tributary and permanent "works" like retaining walls, rip-rap, mattresses, etc.

Without, however, attempting authoritatively to delimit this subject and say what things are embraced in the term "public works" I am very certain that vessels under construction for the navy establishment are not, either in common acceptance or within legal intendments. Mr. Griggs in the opinion cited above points out the bearing upon the inquiry of the ordinary contracts for construction, which have been substantially uniform for a long period, the title to the vessel remaining in the contractor until its completion and acceptance by the government.

The contracts affected by the present inquiry provide for a government lien as payment on account are made, for various preliminary trials and preliminary and conditional acceptance, for final trial and acceptance, and for forfeiture in a certain contingency and the vesting of title in the government thereupon, all showing that complete title does not rest in the government until the conditions and covenants specified are fulfilled.

In a case involving a similar point (*Clarkson vs. Stevens*, 106 U. S. 505, 515-517) the Supreme Court has held:

"Accordingly, we are of opinion that the fact that advances were made out of the purchase money, according to the contract, for the cost of the work as it progressed and that the government was authorized to require the presence of an agent to join in certifying to the accounts, are not conclusive evidence of an intent that the property in the ship should vest in the United States prior to final delivery. Indeed, in reference to the latter circumstance, it is noticeable

as indicating a contrary intention, that the authority of the inspecting officer was expressly limited, so that it should not extend to a right to judge of the quality and fitness of the materials or workmanship, such matters and all others concerning the performance of the contract being reserved for determination after the completion of the work, as a condition of acceptance and final payment. * * * * *

It is thus apparent, as we think, from these stipulations, that the vessel was in all respects to be at the risk of the builder until, upon its completion, the United States should accept it, upon final examination and certificate, as conforming in every particular with the requirements of the contract and answering the description and warranty of an efficient steam battery for harbor defense, shot and shell-proof.

That opinion quotes the rule laid down in *William vs. Jackson*, 16 Gray 514, viz.:

"Under a contract for supplying labor and materials and making a chattel, no property passes to the vendee till the chattel is completed, and delivered or ready to be delivered. This is a general rule of law. It must prevail in all cases, unless a contrary intent is expressed or clearly implied from the terms of the contract."

(See also *United States vs. Ollinger*, 55 Fed. Rep. 959.)

Further, the uniform construction of the Navy Department appears to have been that neither the act of 1892 nor the act of 1894 (*supra*) applies to contracts for the construction of vessels for the navy. And finally, it seems that various bills have been introduced in Congress since 1892 to extend the eight hours limitation of the work of laborers and mechanics to the performance of all contracts entered into by the government, but no such measure has been enacted

into law. If that is the proper policy of the government and ought to be the law, it is for Congress in the exercise of its judgment and discretion so to provide.

A distinction is manifest under certain state statutes and decisions between "public work" (in the singular) and "public works," suggesting generally the difference between the process or activity and the product or completed thing. "Public work," therefore, may be a broader conception than "public works." But it is not necessary to pursue that analysis for the purpose of the present question, because "public works" is the phrase used in all federal statutes on the subject, so far as I can discover, and it is the phrase used in the act of 1892.

My conclusion, therefore, is that the act of August 1, 1892, limiting the hours of service of laborers and mechanics employed on the public works of the United States and of the District of Columbia does not apply to vessels under construction for the navy by contract with builders at private establishments. The case of material for such vessels, as, for instance, armor, guns and other articles obtained under special contracts, is *a fortiori*; and besides rests fully on the ruling of Attorney General Miller in 20 Op. 454, as above cited, which is hereby expressly approved and affirmed.

Very respectfully,

H. M. HOYT,
Solicitor General."

Approved:

W. H. MOODY,
Attorney General.

This opinion was followed by the Attorney General in an opinion rendered to the Secretary of War, dated August 4, 1906. Said opinion is not yet officially reported.

As to the weight to be given the departmental construction of acts of Congress the able compiler of the late work, "Federal Statutes Annotates," in volume 1 thereof, in treating the subject of statutes and statutory construction, lays down the following rule supported by a long line of cases from the Supreme Court of the United States:

"It is a well-settled rule" "that the contemporaneous construction of a statute by those charged with its execution, especially when it has long prevailed, is entitled to great weight, and should not be disregarded or overturned except for cogent reasons, and unless it be clear that such construction is erroneous." "When an act of Congress has, by actual decision, or by continued usage and practice received a construction at the proper department, and that construction has been acted on for a succession of years, it must be a strong and palpable case of error and injustice that would justify a change in the interpretation to be given to it."

In one of the first cases on departmental construction Mr. Justice Trimble said that in the construction of a doubtful and ambiguous law the contemporaneous construction of those who were called upon to act under the law and were appointed to carry its provisions into effect "is entitled to very great respect." After the lapse of sixty years Justice Brewer, tracing "the growth of this principle in our law," observed that "from the time Justice Trimble announced it so cautiously in 1829 it has gained strength every time it was again considered by the court. Impelled by the force of inherent justice, every judge who has taken it up has stated it more strongly than it was stated before." "The offi-

cers concerned are usually able men and masters of the subject. Not infrequently they are the draftsmen of the laws they are afterwards called upon to interpret."

I Federal Statutes Annotated, p. LXXXV-VI.

In the case of *Penn Iron Company vs. William R. Trigg*, *supra*, the Supreme Court of Appeals of Virginia, in construing the act in question, having before it the decision in the case of *U. S. vs. Perth Amboy Shipping Company*, hereinabove referred to, held that the construction of a vessel did not come within the terms of the act, the court concluding its opinion as follows:

"Our conclusion is that the act of Congress, approved August 13, 1894, under the most liberal construction that can be given to it, cannot be held to have intended that the sea-going suction dredge mentioned in the bond sued on should be included in the class of 'public works' contemplated by the statute. If the building of such a vessel was the character of public work intended by the statute, it would follow logically that the manufacture of clothing for the army, the making of horseshoes, or the manufacture of any other article of personal property to be used by the government, is the prosecution of a 'public work.' We are of opinion that the reasonable construction of the statute is that put upon it by Attorney General Griggs — that the act does not contemplate contracts for the construction of vessels or any movable article, but relates to contracts for the construction of public buildings and fixed improvements, such as fortifica-

tions, river and harbor improvements, etc.

It follows, from what has been said, that this action cannot be maintained by virtue of the provisions of the act of August 13, 1894, and therefore the judgment of the circuit court sustaining the demurrers must be affirmed."

**IF RELATOR AND INTERVENOR ARE WITH-
OUT THE TERMS OF THE STATUTE
THE CIRCUIT COURT HAD NO
JURISDICTION.**

If relator and intervenors are not within the terms of the statute then this action must fall, as there is no theory upon which the Circuit Court of the United States would have jurisdiction of this cause. The amount involved in each of these cases is less than \$2,000.00, and the mere fact that the different intervenors' claims may total a greater amount would not give the Circuit Court jurisdiction.

*North American Trans. & Trading Co. vs.
Morrison*, 178 U. S. 262, 44 Law Ed. 1061.

But outside of the question of jurisdiction, as upon a common law obligation, relator and intervenors could not maintain this action.

The bond sued on in this action, if bond it be, was but a common law bond. There is no statute of

the United States requiring or authorizing the execution of such a bond. Under the repeated rulings of the Attorney General's office and under the course of dealings with the War Department, there can be no question as to the fact that it was not the intention of the contracting parties to execute a bond under the provisions of the act relied upon. There being admittedly no consideration from the relator and the different intervenors, there being no privity between them and appellant and plaintiff in error, the bond not being authorized by any statute, there is no authority for maintaining this action. If this bond is the property of the United States no beneficiary could sue under it in the name of the United States for his benefit unless such right is granted by some federal statute.

In *Constable vs. National S. S. Co.*, 154 U. S. 51, 38 Law Ed. 903, the Supreme Court in considering the rights of a third party named in an obligation required by an officer of the Treasury Department without authority of law and denying such right, fully set forth the principle governing.

The provision in the obligation in this case was that certain cargo was to be held.

“At the sole risk of owners of said steamer, who will pay consignee or the owner the value of such cargo respectively as may be stolen, burned or otherwise lost, and who will also pay all duties

on cargo which may be in any way lost by so *remaining.*"

In pointing out the fact that such an obligation was not authorized by any statute, but was merely a form prescribed by the Treasury Department solely without authority, the court says:

"In the forms prescribed, probably by the department, to carry out these regulations, however, there is an apparent departure both from the language of the statute and the treasury regulations, in the obligation the owner of the vessel is required to assume, 'to pay to the consignee or owner the value of such cargo respectively as may be stolen, burned or otherwise lost, and also pay all duties on cargo which may be in any way lost by so remaining.' Here the obligation to indemnify the consignee first appears and occupies the most prominent place, and is extended to goods stolen, burned or otherwise lost, while the obligation to pay duties is mentioned rather incidentally than otherwise. Wherever, or by whomsoever these forms were prepared, we must, for the purpose of this case, treat them as the act of the collector, who, if this contract be construed as intended for the protection of any one but the collector himself, clearly exceeded his authority in requiring the owner of the vessel to assume, as against the consignee, the risk of their being burned while upon the wharf. As the Circuit Court finds that 'such application was in the form required by said collector, without which permit would not be granted, and the entire cargo would be sent to the public store,' it cannot be treated as the voluntary act of the ship owner any further than this contract or obligation conformed to the requirements of the

statute or treasury regulations, which were designed, as we have already stated, only to preserve the previous rights of the consignee against the owner of the steamship unimpaired by the action of the collector. Beyond this it must be treated either as obtained by duress, or so plainly inconsistent with the previous agreement of the parties *intersese* as to be of no avail to the consignee.

"It is a familiar doctrine in this court, that a bond or other obligation extorted by a public officer, under color of this office, cannot be enforced, and the remarks of this court in the case of *United States vs. Tingey*, 30 U. S. 5 Pet. 115 (8:66), are pertinent in this connection. In this case the Navy Department caused a form of bond, not prescribed by law, to be prepared and transmitted to one Deblois, a person to whom the disbursement of public moneys was entrusted as purser, to secure fidelity in his official duties, with a condition that it should be executed by him with sufficient sureties before he should be permitted to remain in office, or to receive the pay or emoluments attached to the office. 'The substance of this plea,' said the court, 'is, that the bond, with the above condition, variant from that prescribed by law, was under color of office extorted from Deblois and his sureties, contrary to the statute, by the then Secretary of the Navy, as the condition of his remaining in the office as purser, and receiving its emoluments. There is no pretence then to say that it was a bond voluntarily given, or that though different from the form prescribed by statute, it was received and executed without objection. It was demanded of the party, upon the peril of losing his office; it was extorted under color of office, against the requisitions of the statute. It was plainly then an illegal bond; for no officer of the government

has a right, by color of his office, to require from any subordinate officer, as a condition of holding office, that he should execute a bond with a condition different from that prescribed by law. That would be not to execute, but to supersede the requisitions of law."

In *Corporation of Washington vs. Young*, 1 Wheat. 406, 6 Law Ed. 352, the court, speaking through Mr. Chief Justice Marshall, in considering an action brought upon a bond executed by the manager of a lottery and holding that such a suit could not be maintained by the owners of lottery tickets, said:

"That no person who is not the proprietor of an obligation, can have a legal right to put it in suit, unless such right be given by the legislature; and no person can be authorized to use the name of another, without his assent given in fact or by legal intendment."

This court in at least two cases has held that an action such as this could not be maintained by persons occupying the same position, as relator and intervenors, in the absence of a statute.

In the case of *Sayward vs. Dexter Horton*, 72 Fed. 758, this court held that Sayward could not interpose a plea in abatement founded upon a contract between two other parties, wherein it was agreed that no claims would be enforced against Sayward. In its opinion the court says:

"The fact that he (Sayward) was incidentally named in the contract or that the contract,

if carried out according to its terms, would inure to his benefit is not sufficient for him to demand its fulfillment."

See also *Hennessey vs. Bond*, 77 Fed. 403.

In *Vroman vs. Turner*, 69 N. Y. 280, the Court of Appeals of New York said:

"To give a third party who may derive a benefit from the performance of a promise, an action, there must be, first, an intent by the promisee to secure some benefit to the third party, and second, some privity between the two, the promisee and the party to be benefited and some obligation or duty owing from the former to the latter which would give him a legal or equitable claim to the benefit of the promise, or an equivalent to him personally."

In *Armour & Co. vs. Western Construction Co.*, 36 Wash. 529, the Supreme Court of the State of Washington had before it a bond conditioned as the bond in this case. The contention in this case on behalf of the surety company was that the statute requiring such bond was unconstitutional. Armour & Company took the position that assuming it was unconstitutional, the bonding company was liable on its bond as a common law obligation. The court held that the statute was unconstitutional and also held that as an established principle of law there was no privity between Armour & Company and the bonding company, and that such company could have no right of action, the court says:

"It is contended that, so far as the Aetna Indemnity Company is concerned, it is bound in any event on a common law obligation, but this cannot be true for the reason that there is no privity between appellant and the indemnity company."

In *Northampton vs. Elwell*, 4 Gray 81, the Supreme Court of Massachusetts says:

"The court are all of the opinion that an action on this bond cannot be maintained in the name of the inhabitants of Northampton. The whole legal title to maintain the action consists in the deed by which the defendant has bound himself to the commonwealth. The right of action on a sealed instrument belongs to the party having the legal interest. This is now well settled."

In *Penn Iron Works, Ltd., vs. William R. Trigg, supra*, the Supreme Court of Appeals of Virginia, considering this question, says:

"The numerous statutes, both state and federal, authorizing suits of this character by parties interested, would seem to furnish conclusive evidence of their necessity; otherwise the law-maker has been engaged in a very idle ceremony."

Further, the agreement of appellant and plaintiff in error was an agreement under seal and it is well settled that no one can maintain an action at law upon such a contract who is not a party thereto.

In *Willard vs. Wood*, 135 U. S. 309, 34 Law Ed. 210, the Supreme Court says:

"If the agreement of the grantee is considered as under seal by reason of the deed being sealed by the grantor, it falls within the well-settled rule of the common law, in force in the District of Columbia that no one can maintain an action at law on a contract under seal to which he is not a party."

In *Crowell vs. Currier*, 27 N. J. Equity 152, it is said:

"The rule that an action at law for the breach of a contract under seal can only be brought in the name of the party to the instrument, and that a third person who is not a party to it cannot sue on it, though it appears to have been made expressly for his advantage, is so *ancient* and has been so generally adhered to, that it must be regarded as *axiomatic* and beyond the power of the courts to alter or destroy."

In *Davidson vs. Clinton Iron Works Co.*, 54 Ia. 60, that court said:

"It is a rule of law familiar to the profession, that a privity of the contract must exist between parties to an action upon the contract. One whom the law regards as a stranger to the contract can not maintain an action and the rule is founded upon the plainest reasons and the contracting parties control all interest and are entitled to all the rights secured by the contract."

In *Anderson vs. Fitzgerald*, 21 Fed. 294, as stated in the opinion:

"For no doctrines are better settled than that a stranger to a contract and to its consideration cannot ordinarily maintain an action upon the contract and that one person cannot make

himself a debtor of another without his consent, express or implied, by proposing to confer a benefit upon him. * * * No man can be made a party to a contract merely because it confers upon him a benefit, how great soever it may be."

In further support of our position we cite—

Carmichael vs. Moore, 88 N. Carolina 29.

Commonwealth vs. Fugate, 1 T. M. Monroe (Ky.) 1.

Wright vs. Terry, 2 So. 6.

Woodland vs. Newhall, 31 Fed. 434.

Ching Kee vs. Davidson, 15 Pac. 100.

Montgomery vs. Spencer, 50 Pac. 623.

Parker vs. Jeffery, 37 Pac. 712.

Commonwealth vs. Hatch, 5 Mass. 591.

Vroman vs. Turner, 25 Am. Rep. 195.

Jefferson vs Ach, 53 Minn. 446, 55 N. W. 604, 25 L. R. A. 257.

Parlin vs. Hall, 7 N. D. 473.

Burton vs. Larkin, 36 Kan. 246, 13 Pac. 398.

Austin vs. Seligman, 18 Fed. 519.

State vs. St. Louis Ry. Co., 125 Mo. 617, 28 S. W. 1074.

Cragin vs. Lovell, 109 U. S. 194, 27 Law Ed. 903.

Kelley vs. Ashford, 133 U. S. 610, 33 Law Ed. 667.

It is an admitted fact in this case that the bond executed by plaintiff in error was furnished by it, and accepted by the United States for its sole benefit and protection (see paragraph 5 of the first affirmative defense, record, page 33). The bond sued upon being at best but a common law bond not executed pursuant to any statute belongs to and is the property of the United States. That the United States was the only party in interest was understood by the parties thereto, and there being no federal statute authorizing the insertion of the provision therein contained as to materialmen and laborers and there being no privity as to them, on this ground alone our demurrer should have been sustained. The record shows that plaintiff in error had complied with all of the requirements of the War Department by placing on file in that office different copies of its articles of incorporation, etc., authorizing it to execute government bonds, showing that plaintiff in error was informed as to the rules governing the execution of such bonds and the construction placed thereon by the different departmental officers, and it had a right to rely upon the construction of the act in question as given by the government and to consider such construction in determining the risk assumed in executing bonds such as the one upon which this action is brought, and as we understand, the rule is, that a contract will be construed most strongly against the

party drawing the same, and that in giving it effect the court will endeavor to put itself in the position of the parties at the time of its execution and give to it that construction which is consistent with their understanding of its terms at the time of its execution. The contract in question was drawn by the United States and the understanding of the parties is plainly evidenced by the construction placed upon the act by the government.

II.

The United States should be made a party. This question was raised on demurrer to the complaint upon the ground of a defect of parties defendant and was preserved by an exception to the order overruling the demurrer of the bonding company. It was again raised by defendant's third affirmative defence, and represented by the assignments of error VIII and X, as set out in this brief.

The act provides that if the United States does not take the initiative and bring an action within six months after completion and delivery of the public building or public work that any person supplying the contractor with labor or materials, upon procuring from the government a certified copy of the bond, can institute an action provided that such action be brought within one year from the acceptance of said building or work.

There is nothing in this act which requires the United States to institute an action within six months or be debarred of any right of recovery on such bond, nor does the act provide that the limitation of one year applicable to laborers and materialmen shall apply to the United States.

It is an elementary principle of law that in case of the insolvency of one engaged in the performance of a contract entered into with the United States government that the claim of the government is prior and paramount to that of all other creditors, no matter what may be the class of their claim, and that general statutes of limitation do not cut off the government from asserting its claim.

This right is expressly granted to the United States by section 3466 Revised Statutes of the United States (Compiled Statutes, p. 2314).

See also—

In re Stover, 127 Fed. 394.

Smith vs. United States, 92 U. S. 618.

In re Hubbell, 47 Fed. 206.

United States vs. Barnes, 31 Fed. 705.

In re Strassburger, 4 Wood 558.

Federal Cases 13.

Bain vs. United States, 93 U. S. 643.

United States vs. McGee et al., 171 Fed. 209.

Under the original act of 1894, as construed, the courts held that the United States, by reason of the wording of the statute, had no such priority in an action upon a contractor's bond, and one of the purposes sought to be accomplished by the amendment of 1905 was to give the United States Government a prior claim, and until the extent of that claim is adjudicated the rights of laborers and materialmen cannot be adjudicated. (*U. S. ex rel. Hill vs. Am. Surety Co.*, 200 U. S. 197.)

There being nothing in the statute requiring the United States to institute an action within six months and there being nothing in the statute cutting off the right of the government to assert its claim, it was not only a proper but a necessary party to this suit, and the court erred in refusing to require that the United States be brought in as a party, and in refusing to require it to set up its claim. The judgment as entered amounts to practically the face of the bond, and under no construction of the act can the plaintiff in error be required to pay more than the penalty of the bond executed by it; and under the plain terms of the act the claim of the United States is a prior claim and until its claim is presented or until it is made a party and cut off by entry of decree, the court is absolutely without jurisdiction to enter any decree as

against a surety upon such bond. This question is particularly pertinent in this case, as at this time there is pending against plaintiff in error a claim asserted by the United States Government growing out of the contract covered by this litigation for some \$3,500.00, and we do not believe under the terms of the statute, under general principles of law, that the courts are going to announce the doctrine that a surety can be held for an amount in excess of the face of the obligation executed by it. The surety has absolutely no means of knowing what claims may be presented by the United States, and the laborer and materialman can only ascertain what his rights are after the adjudication of the rights of the government. This can only be done by joining the government as a party if it has failed to institute a suit on the bond within six months after the completion of the contract, and this is particularly true, as hereinafter pointed out, if no application is made for a certified copy of the bond, as required by the act, the government having no means of knowing that an action had been instituted.

III.

We next contend that before any person has a cause of action upon such a bond as the one in question, such party must apply by affidavit to the proper authorities and procure a certified copy of the bond. This point affects the claims of all claimants, except

the claim of M. A. Barger and the claim of Tracy Bros., each of whom procured in the manner provided by statute, a copy of the bond. This bond is the property of the United States and is in its custody and control, and its right of action is prior to any person else, and it is interested in knowing how many claims and the extent of the claims that are being asserted against the bond, and whether or not the bond is likely to be exhausted by the claims of persons who, under the statute, are made secondary to it. The United States statute also provides what a person must do in order to avail himself of the privileges given by the statute.

This point was first raised by demurrer, then by defendants' second affirmative defense, and is brought here for review by assignments of error numbered V, VIII, IX and XVIII, as well as the assignments of error addressed to the sufficiency of the facts to sustain the judgment.

The discussion of this question is closely allied with the question discussed under the preceding subdivision. The act, after providing that the United States shall have a prior claim, provides that if the United States does not bring a suit within six months from the completion and final settlement of the contract, that then any person furnishing labor or material may, upon complying with certain conditions

precedent, institute a suit upon such bond on his relation in the name of the United States.

The statute, however, provides that this suit can only be instituted upon the performance of certain conditions, and those conditions are plainly set forth in the act, as follows:

“If no suit shall be brought by the United States within six months from the completion and final settlement of said contract, then the person or persons supplying the contractor with labor and materials shall, upon application therefor and furnishing affidavit to the department under the direction of which said work has been prosecuted, that labor or materials for the prosecution of such work has been supplied by him or them and payment for which has not been made, be furnished with a certified copy of said contract and bond *upon which* he or they shall have a right of action and shall be and are hereby authorized to bring suit in the name of the United States in the Circuit Court of the United States,” etc.

We do not understand that there is any rule of statutory construction which permits the courts to give to a statute a construction which is plainly opposed to its plain and unambiguous terms and provisions.

This act provides under what conditions a laborer or materialman may institute suit and upon what that suit must be based, and there is no rule of statutory construction which would authorize the institution of a suit upon a bond such as that upon

which this action is planted, excepting in the manner as plainly provided by this act; that is, upon a certified copy of the bond obtained only after the filing with the proper officers of the proper affidavits.

What the purpose of Congress may have been in requiring the performance of these conditions precedent is immaterial. It can readily be seen, however, that such provision is a necessary protection to the United States. Without some such provision the government would have absolutely no means of ascertaining whether or not the contractor had defaulted and a suit had been instituted unless the defendant had, by demurrer or otherwise, required the relator to join the United States as a party; but the object of Congress is immaterial.

As said by the Supreme Court of the United States:

“The intention of the Legislature when discovered must prevail, any rule or construction declared by previous acts notwithstanding.”

U. S. vs. Freeman, 3 How. 556.

That the conditions hereinbefore pointed out are conditions precedent to the maintenance of an action is also held by the Supreme Court in the late case of *U. S. ex rel. Hill vs. American Surety Co.*, 200 U. S. 197.

The Supreme Court, in speaking of the act and the conditions thereof under which the laborer and materialman might sue, says:

"The affidavit to be filed with the head of a department under the direction of which the work has been prosecuted, requires affiant to state that the labor and materials for the prosecution of such work has been supplied by him for which payment has not been made, and such persons are given a right of action on the bond in the name of the United States."

The true rule governing the construction of statutes where the language is plain, is set forth in volume 1, Federal Statutes Annotated, page LVI:

"Where the language of the statute is clear and unambiguous and the intention plain, it is the duty of the court to expound the statute as it stands, even if the consequence is a hardship or injustice. With the hardship of the law, in a plain case, the court has nothing to do."

And further, on page LIV, this rule is laid down:

"It is, however, an adamant rule of interpretation that the intention of the legislature is to be gathered from the words of the statute; and where the phraseology admits of no doubt, the definitely expressed meaning must be recognized, notwithstanding the statute as thus construed may be deemed irrational legislation."

No affidavit was filed by the plaintiff or by intervenors, and no certified copy of the bond procured, and this action was not based upon a certified copy of such bond. No attempt was made to comply with the provisions of the act, and if it be construed according to the expressed meaning of the terms used, this alone is fatal to the maintenance of this action.

IV.

We next contend that, although valid, the bond is not liable for cartage, towage, wharfage and patterns from which castings are made. This point goes only to the claims of the interventors, Eyres Transfer Company, Chesley Tow Boat Company, Charles H. Allmond Company and the Puget Sound Pattern Works. The complaint of the Eyres Transfer Company, illustrative of this class of complaints, is set out in the record, and the agreed statement of facts, appearing upon pages 8-14 of the record, sets out more fully the individual characteristics of these claims, and the error of granting judgment for this class of claims is represented by assignments of error VIII, IX, XI, XIII, XIV, XV, and as set out in this brief.

Referring first to the claims of the Eyres Transfer Company and the Chesley Tow Boat Company, as we understand it, the term "material and labor" as used in connection with the term "construction," includes such only as actually goes into and becomes a part of the building or work. We do not understand that any right of action is given on such bond to one furnishing personal property or one furnishing labor which does not directly enter into and become a part of the construction of the permanent structure.

A railway and transportation company or car-

rier has no right of action on such bond for the carriage of goods or material which enter into the work.

United States vs. Hyatt, 92 Fed. 442, 34 C. C. A. 445.

U. S. ex rel. McAllister vs. Fidelity & Deposit Co., 83 N. Y. S. 752.

Thomas McLaughlin vs. American Surety Co., 114 Fed. 627.

U. S. ex rel. Laughlin Co. vs. Morgan, 111 Fed. 474.

Am. Surety vs. Laurenceville Cement Co., 110 Fed. 717.

The Supreme Court of the State of Washington has also held that under the mechanics' lien law of that state one is given no lien thereunder for mere cartage charges.

Rhine vs. Guilfoil, 13 Wash. 373.

See also—

Webster vs. Real Estate Imp. Co., 6 N. E. 71.

Wilson vs. Nugent, 57 Pac. 1008 (Cal.).

Referring to the claims for drawings and patterns the rule has been announced by the circuit courts in construing this act that personal property which may be acquired for use in the construction of a public building or the carrying on of some public work, which does not actually enter into such work, but which may be used for other purposes, is not such

material as would give the furnisher thereof a right of action on the bond.

U. S. vs. Morgan, 111 Fed. 474.

U. S. vs. Conkling, 135 Fed. 508.

We respectfully submit that the claims of Eyres Transfer Company and the Chesley Tow Boat Company for cartage and towage, and the claims of Chas. H. Allmond & Company and the Puget Sound Pattern Works for drawings and patterns, are not claims for material or for labor entering into and becoming a part of the public work, and are not such claims as are contemplated by the statute.

In this connection we also cite

Standard Oil Co. vs. Trust Co., 21 App. D. C. 639.

U. S. vs. City Trust Co., 23 App. D. C. 153.

U. S. vs. Mehl, 25 Kans. 205.

Basshor vs. B. & O. Ry. Co., 65 Md. 99.

U. S. vs. Kimpland, 93 Fed. 403.

U. S. vs. Simon, 98 Fed. 73.

Central Trust Co. vs. Texas & St. L. Ry. Co.,
27 Fed. 178.

V.

We next contend that the claim against such a bond as the one in question is a personal privilege

and cannot be assigned, and if assigned the assignee has no right of action upon the bond. This point affects only the claim of F. H. Schroeder, which was assigned to Dunham, Carrigan & Hayden Co. (record, pages 16-17). It is represented by assignment of error VIII.

Our position is simply this, that an action upon a contractor's bond by a materialman or laborer is purely statutory, and is given for the benefit of the individual laborer and materialman, and as such is personal to such laborer or materialman. This is true as we understand the rule in cases in which rights are purely statutory. This is the construction uniformly given to the mechanics' lien statutes of the several states.

20 Am. & Eng. Encyc. of Law, 2d Ed., p. 471.

Vol. I of Jones on Liens, Sec. 982-3, 990.

This has been the rule adopted by the Supreme Court of the State of Washington.

Horton vs. Sparkman, 2 Wash. 165.

Our position is further strengthened in this case by the provision of the statute requiring an affidavit that the claimant furnished labor and material, and that the same was not paid for by the contractor, and authorizing such claimant, upon procuring, upon such affidavit, a certified copy of the bond, to institute an action thereon.

VI.

We next contend that the giving of the bond was without consideration. This appears from the complaint, and was raised upon demurrer and also affirmatively, alleged in paragraph V of the first affirmative defense. It is affirmatively alleged in the complaint that the contract was executed and delivered on the 17th day of February, 1905, and that the bond was not executed until the 27th day of February, 1905, ten days after the parties had become bound by their written contract, while the contract itself does not in its terms require a bond.

Upon this latter question there are few adjudicated cases, but the rule as laid down by the encyclopedias and texts support our position. In the late work of Brandt on Suretyship and Guarantee (3d Ed.).

Section 764. The rule is announced in the following language:

“An agreement to become surety for the performance of a building contract is held to be invalid if the contract between the contractor and the person contracting with him has already been executed, unless there has been a new consideration.”

See also—

Lafayette Building Asso. vs. Kleinhoffer, 40 Mo. Appeals 388.

Ring vs. Kelly, 10 Mo. Appeals 411.

Further, it is an admitted fact in this case (record, pp. 33-34) that the bond was executed by plaintiff in error and accepted by the United States for its sole benefit and protection, and for the protection of no other concern or corporation, and that the same was delivered to the United States and to no person or for the benefit of no person except the United States, and that the execution of said bond contract was without consideration as to any party or concern, furnishing labor or material to the Puget Sound Engine Works, Inc., to be used or which was used in the construction of such vessel, and that the same was wholly without consideration and without authority of law as to the relator and intervenors herein, and each of them.

This is an admitted fact in this case, and under the course of dealing between plaintiff in error and the United States Government, following the construction placed upon this act by the government, it is hard for us to conceive how a court can hold that there was any consideration as to any party other than the United States, and we do not concede that there was any consideration even as to the United States. As we understand the rules of pleading, a demurrer admits the truth of all facts which are well pleaded; and under the issues in this case it is difficult for us to understand on what theory a decree can be entered in favor of relator and intervenors, it

being an admitted fact that there was no consideration for the execution of the bond in question.

VII.

The last point which we desire to ask your honors to review is the rule prescribed by the lower court for taxing costs. This question is pointed out by assignment of error XXI.

Under the amended Act of 1905 it is impossible for the surety on a public contractor's bond to ascertain what its liability may be until the lapse of one year and by reason of the limitations contained in the act all claims not filed within that time are barred. In this case there are some thirty-nine laborers and materialmen, who claim a right of action upon the bond. It is necessary that each of them file their claim in this action that the same may be adjudicated and their equitable portion of the funds due from the bonding company awarded to them, if the court should find the bonding company liable. Outside of any question as to the correct construction of the federal statute requiring the defeated party to pay a docket fee, we do not believe it to be a correct construction of this act to tax against a bonding company, that cannot prior to the expiration of one year satisfy these claims, an attorney's fee to each individual laborer and materialmen. Their several appearances in the circuit court is not brought about by any fault or default on the part of the surety.

In *Missouri Pacific Railway Company vs. Texas & P. Ry. Co.*, 38 Fed. 775, the circuit court for the Eastern District of Louisiana held that an intervenor who filed his claim in a suit involving the operation of a railroad and in which suit there were numerous petitions filed, was not entitled under the federal statutes to a separate statutory attorney's fee, the court saying:

"The intervenor now presents another application to the court, averring that in the matter of the above petition final judgment has been rendered in his favor, and that he is entitled in law to \$20 for his solicitor's docket fee, and to \$37.50 fees for 15 depositions taken in this intervention, under section 823, Rev. St. U. S., and that the defendant declines paying the same; and he prays for an order directing the defendant to pay the amount as claimed. Petitions by strangers to the suit to be paid sums of money on account of the operations of the officers of the court growing out of the management of the property in the custody of the court are mere interlocutory applications therein, (see 2 Daniel, Ch. Pr. *1567;) and the orders thereon, whether granting or refusing the prayer of the application, are not final hearings or decrees within the meaning of section 824 of the Revised Statutes; and no docket fee for final hearing should be taxed thereon. In this case alone there have been hundreds of such applications and orders, and the practice has been invariable not to tax such docket fees!"

See also

Central Trust Co. vs. Wabash Ry. Co., 32 Fed. 684.

The only authority for taxing attorneys fees as costs is found in sections 823 and 824 of the Revised Statutes of the United States.

“Section 823. The following and *no other* compensation shall be taxed and allowed to attorneys, solicitors and proctors in the courts of the United States. * * * * *

FEES OF ATTORNEYS, SOLICITORS, AND PROCTORS.

“Section 824. On a trial before a jury, in civil or criminal causes or before referees * * * a docket fee of \$20.00. * * * * *

In cases at law, when judgment is rendered without a jury \$10.00.”

It is our position that the only construction that can be given to these two sections is that the parties recovering are entitled to a *docket fee* which in this case would be \$10.00. The fact that in an original proceeding a number of complaints in intervention may be filed does not authorize the clerk under the section cited to tax more than one docket fee.

And further as these sections have been construed the docket fee allowed is the individual property of the attorney or solicitor and such attorney although he may appear for a number of intervening claimants is certainly, under the most broad construction,

entitled to have no other fees allowed and taxed than one docket fee.

This was expressly held by the district court for the Northern District of California in the case of *Barron vs. Mt. Eden*, 87 Fed. 483, in which case the court says:

"Section 824 of the United States Revised Statutes provides that upon a final hearing in admiralty, where the libelant recovers \$50 or more, a docket fee of \$20 may be allowed to his proctor; and, if less than \$50 is recovered, then the docket fee of the proctor shall be only \$10. The docket fee thus allowed is the individual property of the proctor, not that of the libelant (*Aiken vs. Smith*, 6 C. C. A. 414, 57 Fed. 423); and where a proctor, upon such final hearing, represents more than one libelant, although such libelants may have filed independent libels in the proceeding, he is entitled to have allowed and taxed but one docket fee. A proceeding before a commissioner upon a reference is not a final hearing, and no docket fee can be allowed a proctor for attendance upon such a proceeding. A final hearing within the meaning of the statute, is a submission of a case for determination upon its merits, or the submission of such question, the disposition of which finally ends the case. *Coy vs. Perkins*, 13 Fed. 111. Motion to retax costs denied."

The court will notice that one firm of attorneys appeared for and filed complaints in intervention in this cause on behalf of at least fifteen of the intervenors. Under the ruling of the court this firm alone would be entitled to a docket fee of \$150.00.

The statute, however, provides that a docket fee of \$10.00 shall be allowed and further provides that no other compensation shall be taxed for attorneys fees as costs. The statute does not provide that there shall be a docket fee for each party appearing, but provides for a single docket fee, and under the construction of this act given by the courts that this fee belongs to and is the property of the attorneys rather than of the party (*Aiken vs. Smih*, 57 Fed. 423; *Gorse vs. Parker*, 36 Fed. 840) we believe the correct construction of the sections quoted, to be that but a single docket fee can be taxed in each case and that the clerk's construction of the statute was correct. If there are cases in which a different rule would apply this certainly is not one of them, it being a case in which it was wholly without the power of plaintiff in error to pay the several claims before the same had been filed and the period of limitation had cut off all other claimants, if any. It is not a case in which it can be said that plaintiff in error in any way through any default on its part required the intervenors to intervene in the circuit court.

We believe upon the whole record that plaintiff in error is entitled to a reversal of the judgment of the Circuit Court of Appeals affirming the judgment entered by the learned circuit judge presiding at the trial of this cause, we believe our demurrer should have been sustained and a judgment of dismissal en-

tered, and have endeavored to treat the several grounds upon which we base this right in a plain and concise manner. This brief is somewhat lengthy, but we consider the many questions before this court which have not been heretofore authoratively determined, by any appellate federal court, of such importance as to demand the consideration we have given them.

Respectfully submitted,

JAMES B. MURPHY,

C. H. WINDERS,

Attorneys for Plaintiff in Error.

M. M. RICHARDSON,

Of Counsel.



No. 67.

No. 21,332

NOV 23 1910

JAMES H. McKENNA

IN THE
SUPREME COURT
OF THE
UNITED STATES

THE TITLE GUARANTY & TRUST COMPANY
OF SCRANTON, PENNA., a corporation,
Plaintiff in Error,

vs.

PUGET SOUND ENGINE WORKS, INC., a corporation;
THE CRANE COMPANY, a corporation, et al,
Defendants in Error.

BRIEF OF DEFENDANTS IN ERROR.

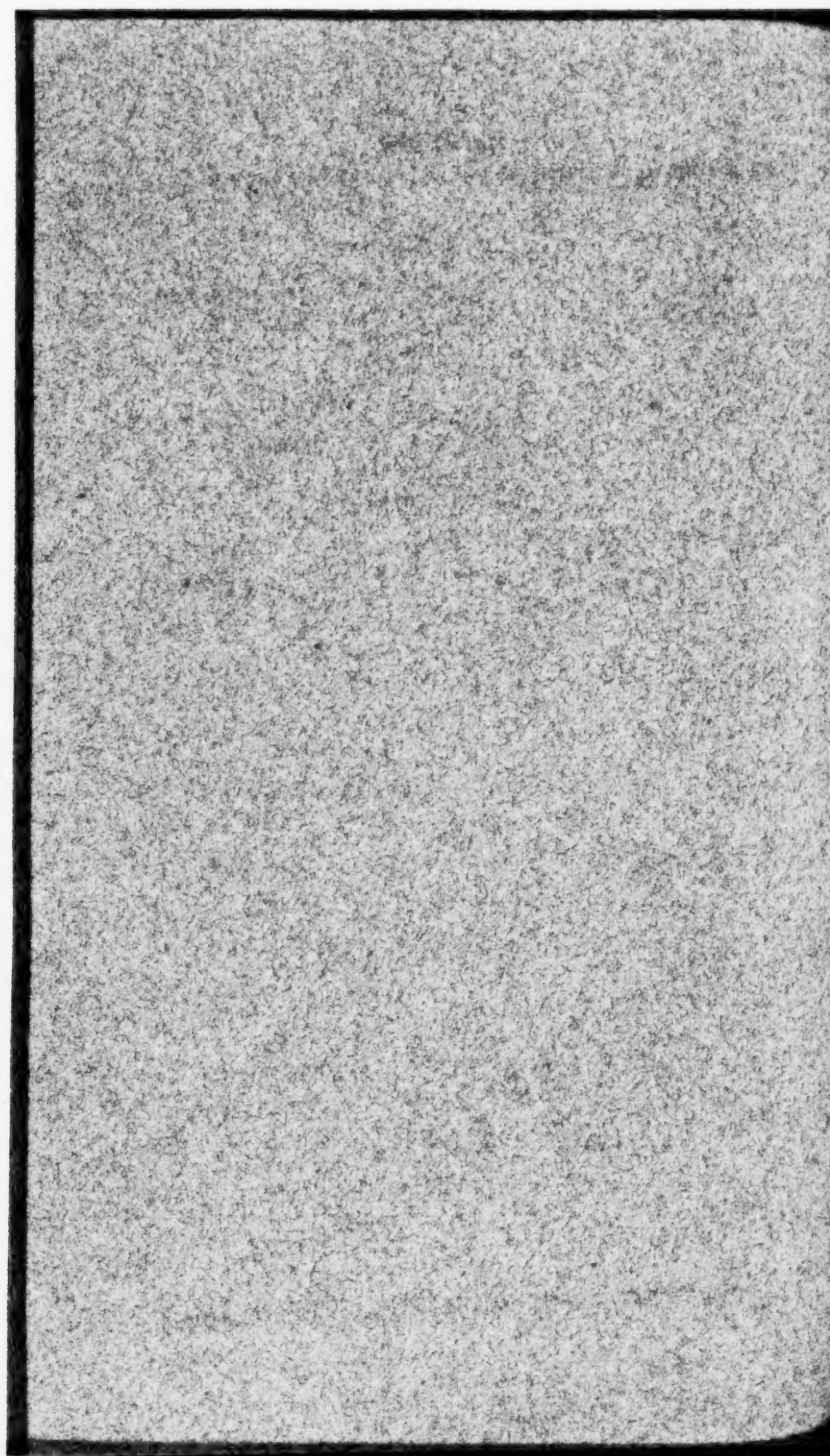
IN ERROR TO THE UNITED STATES CIR-
CUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT.

IRA BRONSON,

Attorney for Defendants in Error.

Except Crane Company.

614 Colman Building, Seattle, Wash.



IN THE
SUPREME COURT
OF THE
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THE TITLE GUARANTY & TRUST COMPANY
OF SCRANTON, PENNA., a corporation,
Plaintiff in Error,

vs.

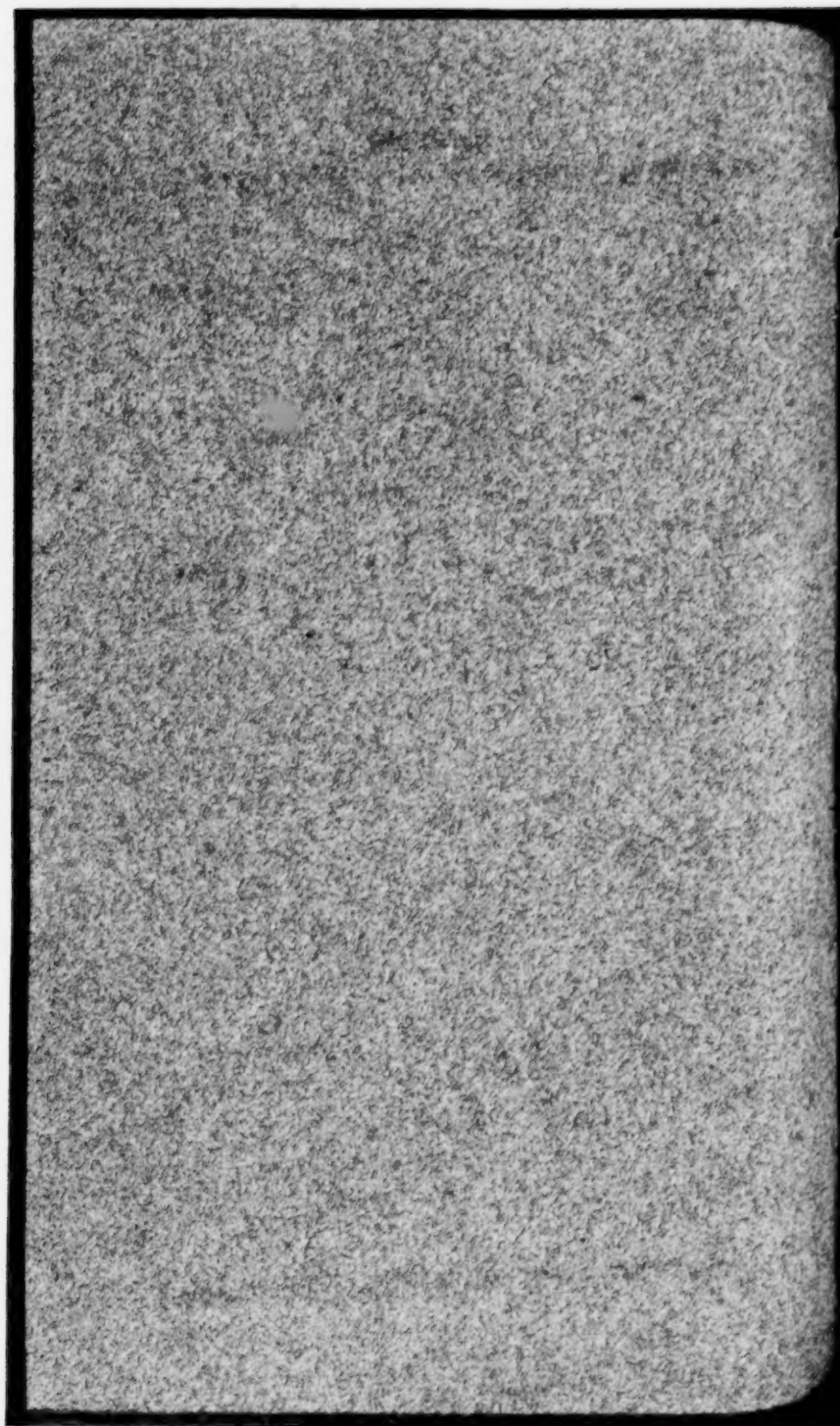
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IN THE
SUPREME COURT
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THE TITLE GUARANTY & TRUST COMPANY
OF SCRANTON, PENNA., a corporation,
Plaintiff in Error,

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PUGET SOUND ENGINE WORKS, INC., a corporation;
THE CRANE COMPANY, a corporation, et al,
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BRIEF OF DEFENDANTS IN ERROR.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT.

IRA BRONSON,

Attorney for Defendants in Error.

Except Crane Company.

614 Colman Building, Seattle, Wash.



IN THE
SUPREME COURT
OF THE
UNITED STATES

THE TITLE GUARANTY & TRUST COMPANY
of Scranton, Penna., a corporation,
Plaintiff in Error,

vs.

PUGET SOUND ENGINE WORKS, a corporation; CRANE COMPANY, a corporation; OLYMPIC FOUNDRY COMPANY, a corporation; THE MARINE MANUFACTURING & SUPPLY COMPANY, a corporation; THE VULCAN IRON WORKS, a corporation; A. H. HOLSTROM, doing business as A. H. HOLSTROM IRON WORKS; BOWLES COMPANY, a corporation; PUGET SOUND MACHINERY DEPOT, a corporation; S. B. HICKS & SONS COMPANY, a corporation; GEORGE BROOM; WHITON HARDWARE COMPANY, a corporation; FREDERICK & NELSON, a corporation; WASHINGTON IRON WORKS, a corporation; JAMES TRACY and JOHN TRACY, co-partners doing business as THE EAGLE BRASS FOUNDRY; CHESLEY TOWBOAT COMPANY, a corporation; T. J. KING and A. WINGE, co-partners doing business under the name of KING & WINGE; JAMES JOHNSTON; L. W. DAVIS and J. H. BUXBAUM,

co-partners doing business under the name and style of DAVIS & BUXBAUM; SCHWABACHER HARDWARE COMPANY, a corporation; GORHAM RUBBER COMPANY, a corporation; PACIFIC ENGINEERING COMPANY, a corporation; SUNDE & ERLAND COMPANY, a corporation; B. D. BATES and R. O. FRASER, co-partners doing business under the firm name and style of PUGET SOUND PATTERN WORKS; J. G. MEACHAM and W. J. PINARD, co-partners doing business as MEACHAM & PINARD; DUNHAM, CARRIGAN & HAYDEN COMPANY, a corporation; M. A. BARGAR, doing business as M. A. BARGAR & COMPANY; WESTERMAN IRON WORKS, a corporation; F. A. FLAJOLE and G. F. BARRITT, co-partners, doing business as STANDARD BOILER WORKS; CHARLES H. ALLMOND and G. E. AHLBERG, co-partners as CHARLES H. ALLMOND & COMPANY; COLUMBIA ENGINEERING WORKS, a corporation; JOHN E. GOOD, doing business under the firm name and style of JOHN E. GOOD METAL WORKS; J. F. FUMELE, doing business under the firm name and style of EAGLE IRON FOUNDRY; LEWIS, ANDERSON, FORD CO., INC., a corporation; EYRES TRANSFER COMPANY, a corporation; F. R. BATES and T. S. CLARK, co-partners doing business under the firm name and style of BATES & CLARK COMPANY; B. MANKE; GEORGE B. ADAIR, and HENRY R. WORTHINGTON,

Defendants in Error.

STATEMENT.

Defendants in error concede that the statement of the case as set out in the brief of plaintiff in error is fairly correct, with the exception of the statement "Shortly before the completion of the vessel the Puget Sound Engine Works, Incorporated, abandoned the work and was adjudged bankrupt, and the United States completed the vessel." (Record, pp. 68, 75, 91.) (See Brief of Plaintiff in Error, p. 6.) This statement is not sustained by anything in the record except that the Puget Sound Engine Works, Incorporated, was adjudged bankrupt, and this was long after the completion of the contract and the acceptance of the work.

For ease in referring in this brief to the work constructed, we designate the vessel built by the title of Lieutenant Harris, by which it was known and designated in the pleadings.

ARGUMENT AND AUTHORITIES.

The defendants in error, for the purpose of

arguing this cause to the court, will endeavor to follow the plan or arrangement laid down by the plaintiff in error, and answer each point in the same order that plaintiff in error has argued the same in its brief.

ONE.

IS THE VESSEL BUILT UNDER THE CONTRACT PUBLIC
WORK WITHIN THE PURVIEW OF THE AMEND-
ED ACT OF FEBRUARY 25TH, 1905?

This is the first point discussed by the plaintiff in error, although its statement of the matter is in different verbiage, and this covers plaintiff in error's assignment of error I, II, III, IV, V, VIII, IX, XIII, XIV, XV, XVI, XVII, XVIII, XIX and XX, as set out in its brief, which assignments of error call up for review the rightfulness of the court's decision in overruling the demurrer of the bonding company to the complaint of Crane Company and to the complaints in intervention of the intervenors in said action, and the rightfulness of the court's decision in sustaining the demurrers of said Crane Company and said intervenors to the first affirmative defense set forth in the answers of the bonding company to the complaint of the said Crane Company and the complaints in intervention

of said intervenors, and the rightfulness of the trial court in entering judgments in favor of the said Crane Company and the intervenors herein and each of them and against said bonding company.

To obtain a correct idea of the object or scope of any statute it is necessary to inquire "Why it was enacted?" or "What was the object of the law-making power in passing the same?" or "What was the defect in the administration of affairs to be remedied by the passage of the same?"

Prior to August 13th, 1894, the government of the United States took a penal bond providing only for the completion of the work free and clear of encumbrances. Thereby no protection was afforded to laborers and parties furnishing materials for the construction of public works erected or repaired by or for the United States. The various mechanics' lien statutes enacted by the states provided no security for these laborers and furnishers of material. There was no way in which moneys in the hands of the United States could be reached by either laborers or materialmen, although the same be due and owing to contractors from the government.

The amendment of February 25th, 1905, was further remedial in that it was intended to over-

come certain hardships to the surety who under the original act was liable to suits in any jurisdiction in which he might be found, and give to the United States that which had been denied it by judicial decision, priority of payment from the surety, and limit the time in which actions might be brought and provide for one action and designating the court in which the same was to be brought. In respect to the persons entitled to the benefit of the bond there was no material change.

A liberal construction of the act and the amended act by the courts shows that it is broader than the mechanics' lien statutes of the various states.

From the decision of Mr. Justice Day we quote:

“In considering the statute and determining the scope of the bond, divergent views have been urged upon the court. Upon the one hand it is insisted that the bond is to be strictly construed, and a recovery limited to those who have furnished material or labor directly to the contractor, and, upon the other, that a more liberal construction be given, and a recovery permitted to those who have furnished labor and materials which have been used in the prosecution of the work, whether furnished under the contract directly to the contractor or to a subcontractor.

“This statute was before this court in *United States Fidelity & G. Co. vs. Golden Pressed & Fire Brick Co.*, 191 U. S. 416, 48 L. Ed. 242, 24 Sup. Ct. Rep. 142, and while the question whether surety companies which are

such for compensation are entitled to the same strict construction of their rights and obligations as is accorded to private sureties, who become such without reward or profit, was left open, it was nevertheless said: 'The rule of strictissimi juris is a stringent one, and is liable at times to work a practical injustice. It is one which ought not to be extended to contracts not within the reason of the rule, particularly when the bond is underwritten by a corporation which has undertaken for a profit to insure the obligee against a failure of performance on the part of the principal obligor. Such a contract should be interpreted liberally in favor of the subcontractor, with a view of furthering the beneficent object of the statute. Of course, this rule would not extend to cases of fraud or unfair dealing on the part of a subcontractor, as was the case in *United States use of Heise vs. American Bonding & T. Co.*, 89 Fed. 921, 89 Fed. 925, 32 C. C. A. 420, or to cases not otherwise within the scope of the undertaking.'

"The courts of this country have generally given to statutes intending to secure these furnishing labor and supplies for the construction of buildings a liberal interpretation, with a view of effecting their purpose to require payment to those who have contributed by their labor or material to the erection of buildings to be owned and enjoyed by those who profit by the contribution of such labor or materials. *Flagstaff Silver Min. Co. vs. Cullins*, 104 U. S. 176, 177, 26 L. Ed. 704, 705. And the rule which permits a surety to stand upon his strict legal rights, when applicable, does not prevent a construction of the bond with a view to determining the fair scope and meaning of the contract in the light of the language used and the circumstances

surrounding the parties. *Ulster County Sav. Inst. vs. Young*, 161 N. Y. 23, 30, 55 N. E. 483.

"As against the United States, no lien can be provided upon its public buildings or grounds, and it was the purpose of this act to substitute the obligation of a bond for the security which might otherwise be obtained by attaching a lien to the property of an individual. The purpose of the law is, as its title declares. 'For the protection of persons furnishing materials and labor for the construction of public works.' If literally construed, the obligation of the bond might be limited to secure only persons supplying labor or materials directly to the contractor, for which he would be personally liable. But we must not overlook, in construing this obligation, the manifest purpose of the statute to require that material and labor actually contributed to the construction of the public building shall be paid for, and to provide a security to that end.

"Statutes are not to be so literally construed as to defeat the purpose of the legislature. 'A thing which is within the intention of the makers of the statute is as much within the statute as if it were within the letter.' *United States vs. Freeman*, 3 How. 556, 11 L. Ed. 724. 'The spirit as well as the letter of a statute must be respected, and where the whole context of the law demonstrates a particular intent in the legislature to effect a certain object, some degree of implication may be called in to aid that intent.' *Chief Justice Marshall in Durosseau vs. United States*, 6 Cranch, 308, 3 L. Ed. 232."

United States ex rel. Hill vs. American Surety Co., 200 U. S. 197, 50 L. Ed. 437.

The Supreme Court of the State of Washing-

ton in passing upon the original statute of August 13th, 1894, in an action by the United States to the use of the Standard Furniture Company against R. M. Henningsen & Co. and the Aetna Indemnity Company as surety upon the bond upon a contract for the erection of the Mary Island Lighthouse Station of Alaska and two keepers' residences, held that the furniture for the keepers' residences was within the provision of the contract and the bond. We quote:

“Appellant * * * urges that the object of Act. August 13, 1894, C. 280, 28 Stat. 278, was to give the same relief, by a proceeding upon the bond of a public contractor, that could be had by foreclosure of a mechanic's or materialman's lien on a building erected by a private owner, claiming such purpose to have been the evident intent of congress, and that said statute should receive such construction at the hands of the court. Appellant has cited numerous authorities for the purpose of sustaining its contention that this statute was intended to afford relief to such parties as would ordinarily be entitled to a mechanic's or materialman's lien under statutes of the various states, were the buildings private instead of public. There is no question but that said statute affords such relief to subcontractors, laborers and materialmen; but a remedy for other parties dealing with the contractor is also afforded” (quoting the act). “This act should be liberally construed, and from its wording we are of the opinion that, not only are claims of the character suggested by the appellant pro-

ected by the bond therein mentioned, but persons furnishing any materials in the prosecution of the work provided for are also protected thereby, even though such materials do not enter into or become a part of any permanent structure. The United States Circuit Court for the District of Maine, in *American Surety Co. vs. Lawrenceville Cement Co.*, 110 Fed. 719, says: 'In using the expression which we have quoted from the statute and the bond, there can be no question that congress had somewhat in mind statutes in various states giving liens on buildings and other property, real and personal, for labor and material. Nevertheless, this statute does not have the same aspect as the ordinary lien statutes referred to, and therefore the latter can afford only very general assistance with reference to the construction of the former. The ordinary lien statutes have been justly and strictly held to cover only what has added to the value of the property against which the lien is asserted, and therefore they are ordinarily administered to protect only what is actually incorporated into its substance. * * *

* The underlying equity of the lien statutes relates to a direct addition to the substance of the subject matter of the building, or other thing, to which the lien attaches, while the statute in question concerns every approximate relation of the contractor to that which he has contracted to do. Plainly, the act of congress and the bond in the case at bar are susceptible of a more liberal construction than the lien statutes referred to, and they should receive it. In the one case, as in the other, the dealings of the person who claims the statutory security must approximate the work, and in the one case, as well as in the other, there must be a certain margin within which there will be difficulties

in discriminating between what is and what is not protected. Nevertheless we are not concluded by the decisions with reference to the ordinary state statutory liens. We can apply them only in a general way, and we are not so restricted by them as to require a construction inconsistent with the remedial purposes of the statute now in issue.' See also *United States to the use of Tidewater Steel Co. vs. Perth Amboy Shipbuilding & Engineering Co.* (C. C.), 137 Fed. 689. Under the construction given to said act by the above authorities, which we feel obliged to follow, there can be no question but that respondent was entitled to recover on said bond for the furniture which it sold to said contractors in pursuance of the terms and stipulations of said contract."

United States to the use of Standard Furniture Co. vs. Henningsen et al., 82 Pac. 171.

The above view of the object and construction of the statute is upheld by the Circuit Court of Appeals of the Eighth Circuit. The court says:

"It is also noticeable that in its title the act professes to be one for the benefit 'of persons furnishing materials and labor,' and that in the body of the act the form of the condition to be inserted in the bond for the benefit of the United States is not in terms prescribed, the only provision in that regard being that the bond shall be 'the usual penal bond'; meaning, evidently, such an obligation for the government's own protection as it had long been in the habit of exacting from those with whom contracts were made for the doing of public work. On the other hand, the condition for the benefit of per-

sons who might furnish materials or labor is carefully prescribed. Obviously, therefore, congress intended to afford full protection to all persons who supplied materials or labor in the construction of public buildings, or other public works, inasmuch as such persons could claim no lien thereon, whatever the local law might be, for the labor and materials so supplied. There was no occasion for legislation on the subject to which the act relates, except for the protection of those who might furnish materials or labor to persons having contracts with the government. The bond which is provided for by the act was intended to perform a double function—in the first place, to secure to the government, as before, the faithful performance of all obligations which a contractor might assume toward it; and, in the second place, to protect third persons from whom the contractor obtained materials or labor. Viewed in its latter aspect, the bond, by virtue of the operation of the statute, contains an agreement between the obligors therein and such third parties that they shall be paid for whatever labor or materials they may supply to enable the principal in the bond to execute his contract with the United States. The two agreements which the bond contains, the one for the benefit of the government, and the one for the benefit of third persons, are as distinct as if they were contained in separate instruments, the government's name being used as obligee in the latter agreement merely as a matter of convenience."

*United States for the use of Anniston Pipe
& Foundry Co. vs. National Surety Co.*, 92
Fed. 551.

A narrow view of the statute supported only

by the opinions of Attorney Generals would place the construction of the work described in the contract without the purview of the statute.

Appellant and plaintiff in error cites in supports of its contentions from the opinion of Attorney General Griggs, reported in volume 23, Opinions of Attorney General, page 174, but for some reason fails to set forth that this opinion was given to the Secretary of the Navy, and fails to give the opinion in full. The opinion as far as quoted is correct, but does not embrace the whole thereof. For the benefit of the court we quote the same in full:

Department of Justice, June 21, 1900.

"Sir:—I have the honor to acknowledge receipt of your letter of June 11, in which you request my opinion as to whether the provisions of the act entitled 'An act for the protection of persons furnishing materials and labor for the construction of public works,' approved August 13, 1894 (28 Stats. 278), apply to contracts about to be made by the Navy Department for the construction of certain naval vessels recently authorized by act of congress.

"The act in question provides as follows:

" 'That hereafter any person or persons entering into a formal contract with the United States for the construction of any public building, or the prosecution and completion of any public work or for repairs upon any public building or public work, shall be required before

commencing such work to execute the usual penal bond, with good and sufficient sureties, with the additional obligations that such contractor or contractors shall promptly make payments to all persons supplying him or them labor and materials in the prosecution of the work provided for in such contract,' etc.

"Accompanying your letter is the form of a contract used by the Navy Department in making contracts for the construction of naval vessels, which form has remained in use substantially unchanged since 1883. By the terms of this contract, the contractor undertakes, at his own risk and expense, to construct, in conformity with drawings, plans and specifications, the required vessel, and to deliver the same at a specified place to such person as the Secretary of the Navy may designate. It is further provided in various clauses of the contract that the vessel shall not be accepted until after a specific trial, which can only be had after her full completion, and even then such preliminary acceptance is only conditional, the final acceptance being postponed to await the result of what is called a 'final trial.' The contract further provides that whenever a payment under it is to be made, as a condition precedent thereto, the Secretary of the Navy may, in his discretion, require evidence satisfactory to him, to be furnished by the contractor, that no liens or rights in rem of any kind against said vessel or her machinery, fittings or equipment, or the material on hand for use in the construction thereof, have been or can be acquired for or on account of any work done or material already incorporated as a part of said vessel or on hand for that purpose.

"I do not think the contract for the construction of a naval vessel, made in such form as I have referred to, is within the act of August

13, 1894. The contracts there referred to relate to the construction of public buildings and the prosecution and completion of public works, and to repairs upon public buildings or public works. The object of the act was to afford a better method for enforcing against the contractor the claims of laborers and materialmen who had done work or furnished material upon property actually belonging to the United States, such as public buildings, which could only be erected upon land to which the United States had acquired a complete title—fortifications, river and harbor improvements, and such other things as are commonly understood under the designation of ‘public works.’ Of course, no mechanic’s or laborer’s lien would attach, by operation of any state statute, to property belonging to the United States on account of work done or materials furnished for improvements thereon. The statute of 1894 intended, in a measure, to remedy the defect in the means of collection at the disposal of laborers and materialmen against contractors upon such work. No such reason applies to cases of the construction of a specific article not attached to soil, the title of which is in the United States, but which is a mere movable article, the whole title to which remains in the contractor until its completion and acceptance by the government. I assume it to be correct to say that if a state law authorized a lien for labor or materials furnished in the construction of a vessel under the form of contract, it would not be void or unenforceable because the vessel was in process of construction for the United States, the property to the same not yet having passed to the government, and such liens could therefore be effectively enforced. The clause of the contract referred to making it optional with the Secretary of the

Navy to require evidence that no liens or rights in rem of any kind exist against said vessel imports that such is the opinion of the Navy Department. The fact that your department, ever since the act of 1894, has construed the statute as inapplicable to the construction of naval vessels, is also of importance.

"I therefore have the honor to advise you that you are not required to take from the contractor a bond with the special condition required by said statute.

"Very respectfully,

"JOHN W. GRIGGS,

Attorney General,

"THE SECRETARY OF THE NAVY."

Plaintiff in error vigorously contends that the Lieutenant Harris was not "public work" within the meaning of the statute and cites from the opinion of Attorney General Griggs above set forth.

A careful perusal of the entire opinion, giving weight to the object of the statute as set out by the Attorney General, leads us to a different conclusion, and there are certain modifying elements in the opinion of the Attorney General which confirm our view. In writing his opinion the Attorney General had before him a form of contract which had been substantially unchanged since 1883. Under the contract the contractor undertook at his own expense to construct, in conformity with the drawings, plans and specifications, the required vessel,

and deliver the same at a specified place to such person as the Secretary of the Navy might designate; that the vessel should not be accepted until after the specific trial, which can only be after her full completion, the final acceptance being postponed to await the result of what is called a final trial. The contract further provided that whenever a payment under it shall be made, as a condition precedent thereto, the Secretary of the Navy might in his discretion require evidence satisfactory to him to be furnished by the contractor that no liens or rights in rem of any kind against said vessel or her machinery, fittings or equipment or materials on hand for use in the construction thereof, have been or can be acquired for or on account of any work done or material already incorporated as a part of said vessel or on hand for that purpose, and then based upon these premises the Attorney General says: "I do not think the contract for the construction of a naval vessel made in such form as I have referred to is within the act of congress of August 13th, 1894. The contracts there referred to relate to the construction of public buildings and the prosecution and completion of public works and to repairs upon public buildings or public works. The object of the act was to afford a better method for enforcing against the contractor the claims of

laborers and materialmen who had done or furnished material upon property actually belonging to the United States, such as public buildings, which could only be erected upon land to which the United States had acquired a complete title—fortifications, river and harbor improvements, and such other things as are commonly understood under the designation of ‘public works.’ Of course, no mechanic’s or laborer’s lien would attach by operation of any statute to property belonging to the United States on account of work done or materials furnished for improvements thereon. The statute of 1894 intended in a measure to remedy the defect in the means of collection at the disposal of laborers and materialmen against contractors upon such works. *No such reason applies* to cases of the construction of a specific article not attached to soil, the title to which is not in the United States, but is a mere movable article, the *whole title* to which remains in the contractors until its completion and acceptance by the government. I assume it to be correct to say that if a state law authorized a lien for labor or materials furnished in the construction of a vessel *under this form of contract* it would not be void or unenforceable because the vessel was in process of construction for the United States, the property to the same *not yet having passed to the government*,

and such liens could therefore be effectively enforced. The clause of the contract referred to making it optional with the Secretary of the Navy to require evidence that no liens or rights in rem of any kind exist against said vessel imports that such is the opinion of the Navy Department. *The fact that your department ever since the act of 1894 has construed the statute as inapplicable to the construction of naval vessels is also of importance."*

Applying the opinion of the distinguished Attorney General to the facts in the case at bar, we find in perusing the affirmative defense, No. 1 of the answer (Record, pp. 29, 30, 31, 32, 33 and 34), in which the bond and contract are pleaded *in haec verba*, that this opinion is not an authority.

Nowhere in the contract does it appear that the officer, F. A. Grant, as quartermaster, had any authority under the contract to withhold payment in his discretion on account of liens or encumbrances for material, or to require any evidence that all material and labor used in or acquired for the prosecution of the work should be paid for, or that there were no liens or rights in rem of any kind against the vessel, her machinery, fittings or equipment for materials or labor thus furnished or required.

Assuming, as contended by the plaintiff in error, that Vol. II of Ballinger's Annotated Codes and Statutes of the State of Washington, Sec. 5953, as amended by an act of the legislature approved the 28th day of February, 1901, gives a lien to parties or persons furnishing material in the construction of a vessel in the State of Washington for the contract price or the reasonable value of such labor and material, this statute is expressly rendered inoperative by reason of the contract entered into on the 17th day of February, 1905, for the construction of said vessel. Article three (3) of said contract provides for the manner of payment, and examining closely this article it appears that it was the intention that ninety per cent. of the contract price of said vessel should be paid prior to and upon the completion of said vessel in partial payments, and that there should remain in the hands of the government for sixty days after the delivery and acceptance, ten per cent. of the contract price. Immediately upon a payment being made that portion of the vessel completed and paid for under said partial payments became the property of the United States, subject to the care of the Puget Sound Engine Works, and it became responsible for the proper care of said portion of the vessel so paid for until

final delivery to and acceptance by the United States.

Article four (4) is in words as follows: "That the portion of the vessel completed and paid for under said partial payments shall become the property of the United States, but the party of the second part shall be responsible for the proper care of such portion of the vessel so paid for until final delivery to and acceptance by the United States as more particularly specified in paragraph 15 at page 6 of said specifications.

It is therefore plain that whether or not the Puget Sound Engine Works paid the parties furnishing the labor and material for said vessel as soon as the government of the United States paid the Puget Sound Engine Works the installment due by reason of the furnishing of said materials and labor, title to the same passed from it to the United States under the contract. This being so, no lien would attach as against the United States by reason of the furnishing of the material and labor and no lien could be effectively enforced therefor.

The Attorney General lays special stress upon the clause of the contract referred to making it optional with the Secretary of the Navy to require evi-

dence that no liens or rights in rem of any kind exist against the vessel, and says that this imports that such is the opinion of the Navy Department, but the contract between the Puget Sound Engine Works and the United States of America contains no such provision. The learned Attorney General lays further stress upon the fact that the Navy Department ever since the act of 1894 has construed the statute as inapplicable to the construction of naval vessels, and that this is also of importance. The present case shows that notwithstanding the opinion of the learned Attorney General the War Department, under whose jurisdiction the Lieutenant Harris was constructed, in the face of the opinion required a bond of \$10,000 with surety, the bond sued on in this action. If any weight be given to the actions of the Navy Department in not requiring a bond, certainly the action of the War Department in requiring a bond in the face of this opinion must be given equal if not greater weight.

What is "public work," or what are "public works," within the meaning of the statute?

The various decisions of the courts all endeavor to pass upon the statute as containing the words "public works" instead of the exact wording of the statute, "public work." The definitions of the words

“public works” as given in the Century Dictionary and the American and English Encyclopedia of Law, Second Edition, are, we believe, narrow and not comprehensive. Our contention is supported by the decision rendered by Judge Cross of the Circuit Court, District of New Jersey, in which he says:

“Counsel cites in support of his proposition definitions of public works from the Century Dictionary and the American and English Encyclopedia of Law, Second Edition. Without quarreling with these definitions we conclude that the meaning of the words “public works” in the act is broader and more comprehensive than the dictionary meaning given to ‘public works’; that public work is susceptible of application to any constructive work of a public character and is not limited to fixed works.”

United States vs. Perth Amboy Shipbuilding & E. Co., 137 Fed., 689.

The United States has construed it to apply to boats by requiring its provisions to be followed in this case. There is no reason why it should not apply to boats, especially under the terms of the contract entered into, and there is every reason why it should be so applied.

Some of the public works in which the bond has been required are the following:

Wingdams and shore protections. *U. S. vs. Farley*, 91 Fed. 474.

A dry dock to be located on the water line of the Brooklyn Navy Yard. *U. S. vs. Frecl*, 92 Fed. 299.

A jetty. *U. S. vs. Hyatt*, 92 Fed. 442.

A wharf and pier. *U. S. vs. Kimpland*, 93 Fed. 403.

Improvements on lock in river. *U. S. etc. vs. Sheridan*, 119 Fed. 236.

Erection of certain guns at Fisher's Island by Pneumatic Torpedo Co. *U. S. vs. American Surety Co.*, 127 Fed. 490.

Building gun emplacements and a wharf. *U. S. etc., vs. Morgan*, 111 Fed. 476.

In construing the act of congress passed August 1st, 1892, Chapter 352, 27 Stat. L. 340, prescribing the hours of daily service of laborers and mechanics employed upon public works of the United States and of the District of Columbia in which the words "public works of the United States" are used, Judge Hanford in instructing the jury says:

"To bring a case therefore within the inhibition of the statute the evidence should be sufficient to show that the officer having direction and control of men employed upon some public work in which the government is engaged exacted from those men or intentionally permitted them to work more than eight hours in a calendar day upon such public work. The removal of obstructions to navigation in the rivers and harbors of the country is a part of the public work of the government. Men employed

in removing obstructions are employed upon public works, and they are to be deemed to be engaged in public work while they are actually working upon the obstructions, and during the necessary time employed in going to and from the places where the work is to be performed and the places where they have to lodge or where they go to meals; and they are also to be deemed engaged in labor upon such public work when they are necessarily required to repair their tools, or grind axes, or do work of that kind. Anything that is incident to their labor in the public work is to be deemed labor upon that public work."

United States vs. Jefferson, 60 Fed. 736.

In support of our contention as to the Lieutenant Harris being a public work of the United States, we have the action of the government in requiring a bond, the authority of the Circuit Court of New Jersey cited above, and the decision of Judge Hanford, and the decision of the Supreme Court of the State of Washington, *United States vs. Henningsen et al.*, and plaintiff in error has apparently supporting its contention the opinion of the Attorney General heretofore referred to, which should not be given any weight for the reason that the facts upon which the same are based are entirely different from those in the case at bar, the contract in each case being absolutely different. The opinion of the Attorney General is not binding upon any court of

the country. It is not a judicial utterance.

In addition plaintiff in error cites *Penn Iron Co. vs. William R. Trigg Co. et al.*, 56 S. E. 329, a decision emanating from the Circuit Court of Appeals of Virginia, in which the court citing the opinion of Attorney General Griggs follows the same and decides that a seagoing dredge is not within the purview of the statute. The opinion, however, fails to show whether the contract to secure the fulfillment of which the bond was given is in terms similar to the one passed upon by the Attorney General or whether it is of the same kind as the contract set forth in this action.

The true test is not whether fixed or movable.

It appears to us that the true test as to whether the work in controversy is "public work" within the purview of the statute does not depend upon whether the same is fixed or movable, improvements upon real property or the construction of a chattel. It is true that if the erection is upon real property of the United States no lien can be enforced against it under the provision of the state statutes giving a lien. Is it not equally true that if by the terms of the contract with the United States the title to the movable or chattel passes to the United States as against the

contractor as to payments under the contract made, that is to say, as fast as the chattel is produced and paid for by the United States, a lien under the state statute would be unenforcible thereon and the same would be within the purview of the act "public work." We contend that this view is consonant with the reason for and harmonizes with the object of the statute. The opinion of Attorney General Griggs, when read with care, certainly supports this view.

It is apparent that dictionary and encyclopedia definitions of public work are not controlling, but liberally to construe the act, as the circuit court and all other courts have said, it must be construed to attain its object. The controlling feature is whether under the contract with the government the title of the construction remains *wholly* in the contractor until acceptance by the government. If the whole title does not remain in the contractor then we contend under the Attorney General's opinion that the vessel or other chattel constructed is within the purview of the act "public work."

Under the contract of Puget Sound Engine Works' laborers and materialmen are not protected by state lien laws.

Notwithstanding the specious and voluminous

arguments of appellant and plaintiff in error that the laborer and materialman under the statutes of the State of Washington was amply protected by its lien laws, we remain unconvinced. The contract with the United States in article four (4) provides that that part of the vessel completed and paid for under the methods of partial payments shall become the property of the United States.

Counsel for plaintiff in error cite the decision of Mr. Justice Matthews in the case of *Clarkson vs. Stevens*, 106 U. S. 505, 27 Law Ed. 139, and claim that this decision is based upon a contract with identical conditions contained in the contract with the Puget Sound Engine Works, and that the court decided that title to a vessel did not pass to the United States Government until the trial tests were completed and the vessel delivered to and accepted by the United States government. A careful perusal of this decision will show the court that counsel read the same in a hurried manner and did not digest the same, or, we are satisfied, they would not have claimed that the same was an authority in behalf of plaintiff in error. The learned Mr. Justice Matthews, in passing upon the questions involved, approves the case of *Woods vs. Russell*, and says:

“The rule first introduced in *Woods vs.*

Russell, 5 Barn. & Ald. 942, as interpreted by the English courts, according to *Clarke vs. Spence*, 4 Ad. & E. 448, is founded on the notion that provision for the payment regulated by particular stages of the work, is made in the contract with a view to give the purchaser the security of certain portions of the work for the money he is to pay, and is equivalent to an express provision that, on payment of the first installment, the general property in so much of the vessel as is then constructed shall vest in the purchaser.' This dictum from *Woods vs. Russell*, according to *Benjamin on Sales*, 246, 2nd Ed., was deliberately adopted as a rule of construction by which in similar shipbuilding contracts, the parties are held to have, by implication, evinced an intention that the property shall pass, notwithstanding the general rule to the contrary, and adds : 'The law thus established has remained unshaken to the present time.' "

The contract in *Clarkson vs. Stevens* contained no provision that the vessel as built and constructed and paid for should become the property of the United States as in the case at bar, but it did contain a stipulation "which required all materials received at the yard for use in constructing the steamer to be distinctly marked with the letters 'U. S.' and declared that they should become the property of and belong to the United States." In passing upon this point, Mr. Justice Matthews says:

"But it does not follow, because the mate-

rials provided for that use were declared to be the property of the United States, it was intended that they should remain so after becoming part of the structure. Such a precaution might well have been suggested as a security against a diversion of the materials to any unauthorized use, or to preserve them to the United States, in case, by reason of the failure of the work or from any other cause, they should not be used in the vessel. Indeed, as is remarked by the learned judge who delivered the opinion of the Court of Errors and Appeals in this case, the express declaration that defined the property in the unused materials seems to exclude the implication sought to be raised as to the property in the unfinished ship; for the inference is obvious, from the particularity of such a provision, that the larger interest would not be left to mere intendment."

Clarkson vs. Stevens, 106 U. S. p. 516.

The case of the *John B. Ketcham 2d* is not an authority for plaintiff in error. This was an action under the Ohio statute by the Globe Iron Works to secure a lien against the steamer *John B. Ketcham 2d*, her engines, etc., being built for Bills & Koch by the Craig Shipbuilding Co., and for which Bills & Koch ordered from the Globe Iron Works certain engines, boilers and machinery. The court says:

"The contract under which the vessel in question was being constructed for Bills & Koch did not provide for payments of the purchase

price as the work progressed, and did not provide for any superintendence by the purchaser during construction. But \$5,000 of the price was to be paid in advance of completion and delivery, and payment was without regard to the proportion of the work then done. In the fact that the advance payment did not relate to the progress of the work on the vessel, the case is plainly taken out of the doctrine of *Woods vs. Russell* and *Clarke vs. Spence*, and is in accord with *Williams vs. Jackman*, 16 Gray, 514-518."

The *John B. Ketcham* 2d, 97 Fed. 873.

The question as to whether the title to a chattel manufactured for another passes as the work progresses, payment therefor being made during the progress of the work, depends wholly, under the laws of the United States, upon the intention of the parties. It has been held by reputable authority that where the contract is silent and without any express provision indicating the intent of the parties as to whether title shall pass before delivery or not, it is competent to prove a parol agreement made before the execution of the contract that title should pass when the work was commenced.

The Poconoket, 67 Fed. 262.

Judge Butler in deciding the above cause, says:

"Looking at the terms of the written contract, alone, and construing them as similar

terms have been construed by the courts of this country, I would be constrained to hold that the title was in the builders. See *Elliott vs. Edwards*, 35 N. J. Law, 265; *Stevens vs. Shippen*, 29 N. J. Eq., 602; *Merritt vs. Johnson*, 7 Johns., 473; *Andrews vs. Durant*, 11 N. Y., 35; *The Revenue Cutter No. 2*, 4 Sawy., 143 (Fed. Cas. No. 11714); *Clarkson vs. Stevens*, 106 U. S., 505 (1 Sup. Ct. 200).

“These cases decide that payment by installment during the progress of construction does not vest title to a vessel in the party for whom it is built, in advance of delivery. The question is one of intention, and our courts hold that such payment is not, of itself, sufficient evidence of an intention to vest title in the purchaser before delivery. The subject has produced much controversy, and in England the inference from such payment is directly the reverse of that drawn here. See *Benjamin on Sales*, p. 246, and the cases there cited. Of course, parties may agree for the transfer of title in advance of delivery, and such agreement may be inferred in the absense of positive expression, where the contract and attendant circumstances justify it. I repeat, looking at the terms of the paper alone, in the light of our decisions, I would be constrained to hold that the title of this vessel remained in the builders.

* * * * *

“The case is, therefore, reduced to the following questions:

“First: Was there an agreement (or mutual understanding, which is the same thing) when the paper was signed, that the title should vest in the steamboat company before delivery of possession; and if there was, then, second, may this be shown?

“I think it is clear that there was such an

agreement. The steamboat company was represented by Mr. Vandergrift and the builders by Mr. Cowles. Each appears to have had full authority in the premises. The question of title arose when the subject of security for advance payments was under consideration. The demand was for \$50,000, which Mr. Cowles pronounced unreasonable, because, as he stated in effect, the title of the vessel would be in the steamboat company, affording partial security at least, for the money paid. The final draft of the written contract had not been made. The statement was not a mere expression of Mr. Cowles' understanding of the law, or construction of the proposed paper, which it was understood might or might not be correct. It was the assertion of a fact, based, as he declared, on his extensive experience in such business—that the title to vessels in process of construction, as contemplated in this instance, is in the party for whom they are constructed, that the title to this vessel would be so vested, and he therefore proposed that the parties proceed in the matter of making a contract, and taking security, on this basis; and they did so—Mr. Vandergrift accepting and acting upon the statement and proposition. The testimony of Mr. Vandergrift and Mr. Cowles (to be found in the respondent's record at pages 20, 21, 31, 48, 49, 64, 65 and 66) is harmonious throughout, and leaves no doubt that it was distinctly agreed that the title should be treated as vesting in the steamboat company from the beginning, if a contract, as proposed, was entered into. The demand for security was consequently reduced \$25,000 on this account, and the paper signed. Without this agreement Mr. Vandergrift declares the demand for security would not have been reduced, nor the paper signed. The testimony of Mr. Cowles and the

transaction itself sustain this declaration. It is unreasonable to suppose the steamboat company would otherwise have bound itself for the advancement of nearly \$50,000 on security for its return in only \$25,000—in case the builders failed. I have called this an agreement, rather than an understanding, because a mutual understanding between contracting parties is an agreement, and properly is so designated.

“We are thus brought to the question: Does the execution of the paper preclude proof of the agreement? Counsel have urged with great earnestness and ability that it does, because such proof would contradict the paper. I am not able to adopt this view. The paper is silent on the subject. It provides, simply, for building the vessel described, within a specified period, and paying for it in a specified manner, with privilege in the steamboat company to refuse possession and recover the price paid if the builders fail in duty. There is no mention of title or allusion to the subject. It is left entirely to inference. Without more (as stated) the court would infer intention to leave it in the builders, because the contrary is not expressed. If the paper had said it shall vest in the steamboat company it would of course have so vested, and this would not have been inconsistent with any other provision. It would simply have repelled an inference, otherwise arising from its absence. If it had been reduced to writing separately this writing would certainly be admissible as collateral to and consistent with the terms of the paper. It would no more contradict it than it would if inserted therein. Suppose the parties had written: ‘It is agreed (or understood) that title to the vessel shall (or will) vest in the steamboat company during the process of construction, and consequently secur-

ity for advancements on account of price is fixed at \$25,000, and the contract will be signed,' or had written: 'It is understood in entering upon the contract about to be executed that title to the vessel shall vest in the steamboat company when work commences,' could it reasonably be contended that the writing would not be admissible? That the agreement was left in parol is unimportant. A parol agreement collateral to a written one whose terms it does not contradict or vary, is as admissible as one reduced to writing. I find no difficulty therefore in admitting the evidence on this ground."

This course was affirmed by the Circuit Court of Appeals, 70 Fed., 640, and its decision affirmed by the United States Supreme Court, 168 U. S., 707; 42 Law Ed., 1214.

Is not this authority in line with the case at bar in that the United States of America accepts a bond of \$10,000 to secure the performance of a contract of \$24,800? Did not the United States rely upon the passing of the title to it of so much of the Lieutenant Harris as should be paid for and completed under the terms of the partial payment contract? It appears to us that no other view can be taken of this matter.

We cannot quarrel with the quotation of the rule laid down in *Williams vs. Jackson*, 16 Gray, 514, quoted in the opinion of H. M. Hoyt, Solicitor

General, that under the contract for supplying labor and materials and making a chattel, no property passes to the vendee till the chattel is completed and delivered or ready to be delivered. This is a general rule of law. It must prevail in all cases unless a contrary intent is expressed or clearly implied from the terms of the contract. Does not the contract of the Puget Sound Engine Works express a contrary intent? It is written in the English language and as we read it shows "that the portion of the vessel completed and paid for under said method partial payments shall become the property of the United States." The cases cited by plaintiff in error are all based upon contracts silent in whom the property should be vested during the continuance of the contract.

In *United States vs. Ollinger*, 55 Fed., 959, we find a case in which the United States had agreed to purchase certain barges upon their completion, if completed within four weeks, and the court rightfully said that in so far as the eight-hour law for the protection of laborers was concerned the parties engaged in building the same were not engaged upon public work of the United States. The remaining cases cited at this point in plaintiff in error's brief are not based upon contracts similar to the one in

the case at bar, and are not authorities for appellant and plaintiff in error.

Under the contract with the Puget Sound Engine Works no lien would attach.

Under Section 5953 of Ballinger's Annotated Codes and Statutes, cited by plaintiff in error, no lien would attach to the Lieutenant Harris in favor of laborers and material men, as by the terms of the contract the vessel as completed and paid for became the property of the United States. There was, therefore, no waiver of any lien by the relator and intervenors; no security which they had has been dissipated or lost. The record shows (Transcript, page 68) that each of the creditors named as relator and intervenors herein received in the bankruptcy proceedings nine and six-tenths per cent. of their original claims and credit has been given therefor.

Plaintiff in error claims to have been deprived of the priority right of the United States. A search of the record fails to show that such right is being asserted by the United States, or that any such right exists. Neither does the record show that the same was not fully settled in the bankruptcy proceedings of the Puget Sound Engine Works. The claim or claims of the United States are not before this court and were not before the trial court.

Plaintiff in error cites numerous cases construing Section 3466, Revised Statutes of the United States, giving priority to the United States in the administration of the estates of insolvents where the United States is a creditor, but these cases are not in point nor are they authorities for plaintiff in error.

As the court says in *United States vs. Heaton*, 128 Fed., page 417:

“The debtor with whom this controversy is concerned is not the insolvent Heaton, but is the bond and trust company, and as that company is admittedly solvent, Section 3466 has no application.”

Granting for argument priority to the United States, the plaintiff in error had full remedy under Section 3468 by paying to the United States whatever claim it might have against the Puget Sound Engine Works upon its bankruptcy, and plaintiff in error under said section would be subrogated to the prior right of the United States.

We deem it probable that the plaintiff in error was also protected under Section 57i of the Acts of Congress relating to bankruptcy, as follows:

“Whenever a creditor, whose claim against a bankrupt estate is secured by the individual undertaking of any person, fails to prove such claim, such person may do so in the creditor’s

name, and if he discharge such undertaking in whole or in part he shall be subrogated to that extent to the rights of the creditor."

It, therefore, is plain that the tears thus shed regarding the waiving or the loss of security which plaintiff in error asserts the relator and intervenors had, are not the foundation of a defense in this court. Plaintiff in error had the two methods above set forth for its protection, but either of these would have denied to the plaintiff in error a right to contest its liability upon the bond executed by it, and it cannot complain if in its endeavor to escape the greater liability it shall have lost some rights whereby it may have obtained reimbursement for a portion of its loss.

This court has decided that sureties contesting liability cannot prove a claim against a bankrupt. It was decided in *Insley vs. Garside*, 121 Fed., 699. We quote the syllabus:

"The contingent claim of the surety of a bankrupt principal, who, in his petition for the allowance of his claim, expressly limits his admission of his liability as surety to the bankruptcy proceeding, thereby indicating an intention to contest his obligation, is improperly allowed."

Relator and intervenors are within the terms of the statute, and the Circuit Court had jurisdic-

tion of the suit.

The question of the jurisdiction of the Circuit Court was not raised at any stage of the proceedings in said court. A careful consideration of all of the authorities cited by defendants in error leads us to urge that the bond given by the plaintiff in error was strictly within the terms of the statute of August 13, 1894, as amended February 25, 1905; that said bond was given in pursuance of the statute so amended. Therefore, the Circuit Court had jurisdiction of the cause. One or two isolated authorities cited by plaintiff in error would lead to a different conclusion, but those cases follow a narrower construction of the act in question and do not give to it that liberality of interpretation which is essential to carry out its beneficent purposes. It is unnecessary for us to consider each of the cases cited under the converse of this head by plaintiff in error in its brief. The bond sued upon was not a common law bond, because executed pursuant to a statute of the United States. It was executed pursuant to and under the statute aforesaid. While the record does not show it, it is probable that the plaintiff in error had complied with the requirements of the war department authorizing it to execute government bonds, but this does not show that the plaintiff in

error was informed "as to the rule governing the execution of such bonds and the construction placed thereon by the different departmental officers, and that it had a right to rely upon the construction of the act in question as given by the government and to consider such construction in determining the risk assumed in executing bonds such as the one upon which this action is brought." The only ruling which the plaintiff in error can claim to have had knowledge of was the opinion of Attorney General Griggs. (Vol. 23, Opinions Atty. Generals, 174.) It could not have had knowledge of or relied upon the opinions of Solicitor General Hoyt approved by Attorney General Moody August 3, 1906, or of H. M. Hoyt, Acting Attorney General, dated August 4, 1906, and the fact that the War Department required the bond for the performance of the contract in the face of the decision of the Attorney General given to the Navy Department was notice to the bonding company that the United States did not rely upon the opinion of its former Attorney General, but, to protect and secure itself, required a bond to be given within and under the Act of Congress.

Counsel for the plaintiff in error urge that the contract must be construed most strongly against the

United States as the party drawing the same. That may or may not be true, but none of the parties before the court as relator or intervenors had anything to do with drawing the contract. They sue under the statute in the name of the United States for their benefit and use. They are not bound by the understanding of the government nor by any construction which was placed upon the act by the government through its Attorney General or the Navy Department, as the work was to be performed under the direction of the War Department.

The contract was within the scope of the act and within its express terms. The materials and labor required were within the terms of the contract. Plaintiff in error entered into the engagement under the statute and is now estopped to deny liability.

In support of this contention we quote the language of the Supreme Court of the State of Washington:

“But, were it to be conceded that said furniture was not contemplated by the statute it was clearly required by the contract, being a part of its subject matter. The bond was given to secure the faithful performance of said contract and payment to all parties furnishing any material thereunder. Appellant under its contract should be held liable, without regard to any

statute as it has by said bond contracted to assume such liability and there is nothing in said agreement contrary to public policy, nor can any objection be made to it or its terms requiring it to be held invalid. In *United States to Use of Tidewater Steel Co. vs. Perth Amboy Shipbuilding & Engineering Co.* (C. C.), 137 Fed., 689, the United States Circuit Court for the District of New Jersey, construing said statute and also a bond given thereunder, said: 'Waiving, however, the general character of this last reason we will for a moment consider the point made under it, that the Act of Congress (Act, August 13, 1894, c. 280, 28 Stat., 278, U. S. Comp. St., 1901, p. 2523) gives a right of action only to persons supplying labor and material "for the construction of any public building, or the prosecution and completion of any public work, or for repairs upon any public building or public work," which provision does not include steamers for the harbor service of the quartermaster's department; and counsel cites in support of his proposition definitions of "public works" from the *Century Dictionary* and the *Am. & Eng. Ency. of Law* 2d Ed.). Without quarreling with these definitions, we conclude that the meaning of the words "public work" in the act is broader and more comprehensive than the dictionary meaning given to "public works;" that public work is susceptible of application to any constructive work of a public character, and it not limited to fixed works. The statute should be liberally construed to accomplish its purpose. But, without further discussion of the point, it is quite sufficient to say that, whether the foregoing view is correct or not, the defendants are estopped from setting up such defense. They executed the bond, well knowing

its intent and purpose, and, since the purpose was not immoral or illegal, they cannot now be heard to deny their liability, voluntarily assumed and undertaken.' We are satisfied that the recovery had by respondents in this action was contemplated by said statute and also by said bond."

United States, to Use of Standard Furniture Co. vs. Henningsen et al., 82 Pacific, page 171.

From a perusal of the above authorities we urge that the estoppel as against the bonding company is two-fold: It is estopped to deny its liability upon the bond and it is further estopped to deny the jurisdiction of the court in which the action is pending.

TWO.

SHOULD THE UNITED STATES HAVE BEEN MADE A PARTY?

This question was raised as set forth in the brief of plaintiff in error, but in raising the question before the trial court it appears that the objection was that there is a defect of parties in that the United States is not made a party and that it does

not appear on the face of the complaint or complaints in intervention that all claims against said bond in favor of the United States have been paid. We urge that it is not necessary to make the United States a party. It had no interest, at the time of the commencement of this action, in the matter in controversy, and has not now any interest therein.

Under the original Act of 1894, providing that contractors for public works should give a penal bond, the United States had no priority against the surety upon the bond and by a course of decisions the court in construing the Act held that the United States was deprived of priority against the surety. The amendment of February, 1905, was therefore remedial and to grant the United States priority under certain conditions. By this amendment of February, 1905, the suit on the bond can only be brought during the first six months after the completion and final settlement of the contract by the United States, and the cause of action is exclusively in the United States during that period and no creditor or claimant can bring any suit during the six months' period. If the United States brings suit it is protected in its priority and the balance is divided pro rata among the creditors if the penalty of the bond is not sufficient to pay all in full. If

the United States does not bring suit on the bond within six months then any creditor or claimant having furnished materials or labor can bring suit on the bond in the United States Circuit Court, and all creditors are given an opportunity to intervene within one year and not later. The Act provides that personal notice of the pendency of the action and notice by publication shall be given to all known creditors. If recovery should be inadequate to pay the amount found due such creditors, judgment shall be given each creditor pro rata for the amount of his recovery. The surety may pay into court for distribution among the creditors the full amount of the surety's liability, that is, the full penalty of the bond less any amount that it may have had to pay to the United States by reason of the execution of such bond. From these last provisions it appears that there are in reality two statutes of limitation in the statute as amended February, 1905; against the government of the United States upon its prior claim, six months; against all claimants or creditors, one year. The complaint and complaints in intervention in this action show that the United States brought no suit within six months. It is therefore barred and has no claim against the surety by reason of the execution of the bond and therefore need not be made a party to this action.

Plaintiff in error contends that the judgments entered in this action amount to practically the face of the bond and under no construction of the Act can plaintiff in error be required to pay more than the penalty of the bond executed by it, and that under the plain terms of the Act the claim of the United States is a prior claim, and until its claim is presented or until it is made a party and cut off by entry of the decree, the court is absolutely without jurisdiction to enter any decree as against the surety upon such bond.

Plaintiff in error further contends that this is particularly pertinent as, at this time, there is pending against the plaintiff in error a claim of \$3,500.00 asserted by the United States government growing out of the contract covered by this litigation. A search of the record fails to disclose any such claim; and we take it there is nothing in the record to show that any such claim is made.

The brief of plaintiff in error furnishes relator and intervenors their first and only intimation of such claim. Is this claim properly before the court? Is the case to be tried upon the office files of the Surety Company, or will the court pass upon the same upon the transcript of the proceedings of the court below? The United States had six months

from the completion of the contract to ascertain what the liability of the Surety Company was to it and to bring its suit against the Surety Company to recover the same. If it has failed to do so and has lost its right by reason of its laches, the burden must be borne by the United States and the officers through whom it should have acted. If, on the other hand, the Surety Company, plaintiff in error, had any cause to believe at the time of the institution of this action that the United States had any claim and that the priority of the United States was not cut off within the six months' period provided by statute, it could amply protect itself and find ample relief by paying the amount of its bond into court, as provided by the terms of the statute and by adjudicated cases. However, this Surety Company, plaintiff in error, has never been anxious to ascertain the party entitled to the penalty of the bond or any part thereof; but stands before this court, as well as the court below, denying its liability. It is a paid surety accepting the premium from a contractor with the United States and now when it finds its contract was one whereby it could not receive its premium as a profit, but that it is liable for loss, it urges every defense and denies liability, to escape the payment of the obligations

it has undertaken. It is well settled by the authorities that it must be held to a stricter construction of the statute than a surety without reward, and that it cannot escape under any of the decisions rendered in cases where the surety was one who received no reward or compensation.

The amended act under which this action was brought provides that every claimant, without excluding the United States, shall have the right to intervene. This being the law, the United States, if it had any claim, had at all times its right to intervene if it were a claimant against the surety. In the first place, it failed to institute suit and thereafter it failed to intervene in this action within one year. If it were not bound by the statute limiting its right to bring suit within six months, it is certainly barred under the statute granting claimants the right to intervene within one year. In view of the ample provisions of the statute for the protection of the surety, the solicitude of this paid surety denying liability that the United States be protected is certainly one which appeals to the sense of humor.

If it had been the intention of Congress that in an action by creditors and claimants it were necessary for the United States to be made a party, how

easily it could have said so by placing such provision in the statute. It will be noted that the amendment to this statute endeavors to cover the matter fully. An impartial reading of the statute certainly gives weight to our contention that during the period in which creditors are entitled to bring action it was not intended that they should be concerned with the rights of the United States. The United States was, therefore, not a proper or necessary party to this action. That the statute did not contemplate that the United States should be a party defendant in this proceeding is clearly evidenced by the fact that the claimants are authorized to bring suit in the name of the United States.

THREE.

IS AN APPLICATION BY AFFIDAVIT TO THE DEPARTMENT UNDER WHOSE DIRECTION THE WORK IS PERFORMED A CONDITION PRECEDENT TO BRINGING SUIT?

Plaintiff in error argues voluminously that such is the case; that the filing of the affidavit with the proper department and the obtaining of a certified copy of the bond and contract is jurisdictional; that

without this condition precedent, no matter how meritorious the claim, the claimant shall not recover unless he shall have first filed the affidavit. This is contrary to the only reported case which construes the statute prior to the amendment thereof.

“Act of Congress, August 13, 1894, c. 280, 28 Stat., 278 (U. S. Comp. St., 1901, page 2523), entitled, ‘An act for the protection of persons furnishing materials and labor for the construction of public works,’ which authorizes persons supplying labor and materials to contractors for the construction of any public work to bring suit in the name of the United States, for his or her use and benefit, against the sureties of the contractors, does not impose, as a condition precedent to the bringing of such action, the filing of an affidavit of claim with the department having charge of the work for which the bond has been given. The object of filing the affidavit is simply to secure a copy of the contract and bond.” *United States vs. Hegeman*, 21 Pa. Super. Ct., 459.

Counsel argue that it can be readily seen that such provision is necessary for the protection of the United States. Without some such provision the government would have absolutely no means of ascertaining whether or not the contractor had de-

faulted. Plaintiff in error says that M. A. Barger and Tracy Brothers each procured in the manner provided by statute a copy of the contract and bond. The record is silent as to how many of the intervenors obtained similar copies. It may have been that all of them did so and failed to allege it. If plaintiff in error's contention is correct, the obtaining of one copy of the bond was sufficient to bring notice home to the United States that there was a default by the contractor and that an action would probably be brought upon the bond.

The reasons assigned by plaintiff in error are not logical. The undoubted object of the statute was to protect the various departments from being required to disclose to each person, upon a simple request, the nature of the contract and the bond under which the contractor was performing his contract, as an evidence of good faith and of interest in the subject matter to require that a request for information regarding the contract and the bond should be upon an affidavit showing an interest in the subject matter of the contract by the claimant having furnished labor or materials for the construction under the contract, some portion of the purchase price of which remains unpaid; and the furnishing of the certified copy was for the conven-

ience of claimant that he might properly plead the facts against the proper party defendant, and his action when brought is not upon the certified copy of the bond and contract furnished him, but upon the original contract and bond filed in the department. By all rules of grammatical construction the pronoun "which" refers for its antecedents to the nouns immediately preceding it, "contract" and "bond," and not to the words "certified copy."

FOUR.

Plaintiff in error contends that certain claims, those of the Eyres Transfer Company, the Chesley Tow Boat Company, Charles H. Allmond Company, and the Puget Sound Pattern Works, are not within the purview of the contract and bond. It is true that the courts have decided that a railroad and transportation company or carrier has no right of action on such a bond for the carriage of goods or material which enter into the work, but this is based upon the fact that the railroad company is abundantly protected by its lien on the freight, and Congress did not contemplate that a charge for trans-

portation by a railroad company would be made against the work, and certainly not when the carrier was fully secured otherwise, but this decision is not in point for the reason that the Eyres Transfer Company was not a common carrier but engaged in the business of cartage and delivering.

Judge Butler in the case of *American Surety Co. vs. Lawrenceville Cement Co.*, 110 Fed. 717, reversed the decision of the master and allowed to Henry N. Merrill his claim for trucking from the regular steamboat landing on the island where the work was done to the precise locality of the work. The Court at page 721 says:

“We think the master was too strict with reference to some minor claims for transportation. Clearly, he was right in his illustrative suggestion which led up to his conclusion with reference to claims for trucking and water carriage. As stated by him, the carrier ordinarily has a lien for his freight, which is a sufficient protection to him. Therefore, in cases of transportation by a carrier from distant points, or, indeed, from another port than the port at which the contractor's work is being done, the carrier would not ordinarily be protected by the statutory bond, for two reasons: First, transportation for considerable distances in the regular course, by the ordinary lines of either steam, sail or rail, cannot easily be brought within the words of the statute, ‘supplying labor or materials’; and, second, in-

asmuch as carriage of that character, especially under an ordinary bill of lading, or its equivalent, creates a well-recognized lien for freight, the equitable rule would apply that a carrier, under such circumstances, cannot give up his cargo, and enforce his claim against a mere surety, after he has so placed himself that the surety cannot be subrogated to the security which the law gave. The first objection, however, does not necessarily apply to truckmen who are moving materials from a place of landing to the exact locality of the work under contract, although the distance may be somewhat considerable, nor to water-borne transportation carried on by the servants of the contractor, or for short distances without the aid of steam or a fully-equipped vessel. The second objection, moreover, must not be carried to an extreme, otherwise it would defeat the practical operation of the statute. Every person selling materials for cash holds a lien for the purchase money until he voluntarily waives it by delivery; and every person engaged in transportation, who is not the mere servant of the owner of the merchandise transported, holds a carrier's lien even though the carriage is of miscellaneous parcels, over short distances in the immediate locality, and at frequent, irregular intervals. Nevertheless, with reference to each, such liens are not ordinarily insisted on, and it would be an unreasonable construction of the statute to hold that it intended to interfere with the convenience of minor dealings in such methods as the usual practices establish. Therefore, as already stated with reference to either class, to insist on the fact that the lien is waived, and short credit given, would defeat the beneficial purpose of the statute, and the practical ends which it is intended to accomplish."

Counsel for plaintiff in error object to the claim of the Chesley Tow Boat Company for wharfage, the Charles H. Allmond Company and the Puget Sound Pattern Works, and in support of its objection to these claims cite *United States ex rel. Laughlin vs. Morgan*, 111 Fed. 474. We can not perceive why this case was cited. A perusal of the same shows that Judge Webb in passing upon the questions involved laid down the rule as set forth in the syllabus:

“The surety in a bond given by a contractor for government work, conditioned as required by Act Aug. 13, 1894 (28 Stat. 278), to secure the payment of all persons supplying the contractor ‘labor and materials in the prosecution of the work,’ is liable, in favor of one supplying materials, for the price of materials so furnished which actually entered into the work, together with the expense of transporting the same to the place where the work was being done, paid by the claimant, which may properly be considered as a part of the price; also for materials used in the construction of false works necessary in the performance of the contract.”

In the construction of a work requiring castings this Court knows of its own knowledge that before the casting can be made a pattern must be furnished to the moulding department. Upon its receipt the moulding department imbeds the same in

the sand and through its various processes the pattern is removed and the molten metal passed through an orifice so that when the molten metal shall have passed into place it occupies in the sand the space once occupied by the pattern, and after a sufficient time has elapsed this space is filled with the casting. If this casting becomes a part and parcel of the vessel erected under the contract, can it be said that the party who designed and made the pattern for the casting is not within the purview of the beneficent statute entitled "An act for the protection of persons furnishing materials and labor for the construction of public works." Any construction which would deny protection to pattern makers under such conditions is too strict and literal to attain the object for which the statute was passed and could only be urged by a surety for compensation while denying all liability upon the bond and contract.

We contend that the cases cited by plaintiff in error, *United States vs. Morgan*, 111 Fed. 474, *United States vs. Conklin*, 135 Fed. 508, have no bearing upon the claims of the Charles H. Allmond Company and the Puget Sound Pattern Works for drawings and patterns. A perusal of these cases by the Court will show that they are

not in point. In the last case mentioned the service for which the claimant endeavored to recover was the use of scows which were used indiscriminately upon three contracts. There is nothing in the record, the pleadings or the evidence before the trial court or this Court that such a state of facts existed in this cause.

It is true that a portion of the claim of Eyres Transfer Company is for freight advanced to the carriers by the transfer company as a cartage concern. This Court understands and takes notice of the course of human affairs and knows that in the larger cities of the western portion of this country, it is common for cartage concerns to advance the charges upon freight consigned to customers and to add the same to their cartage bill, and they are entitled to a lien therefor, but the course of dealing is such that by reason of competition they do not demand cash upon delivery and present their bills at stated periods when they are generally paid. This is different from transcontinental or large carriers and transportation companies who demand cash from the consignee upon delivery of the goods. As heretofore argued herein the object of this statute is the protection of those furnishing labor and material for the construction of public work. It

would be a narrow construction of the statute, too narrow in fact, to attain its primary object, if that portion of the claim of the Eyres Transfer Company should be held without the purview of the statute.

FIVE.

THE CLAIMS OF LABORERS AND MATERIALMEN
ARE ASSIGNABLE UNDER THE ACT AND THE ASSIGN-
MENT DOES NOT DEFEAT A RECOVERY.

Plaintiff in error contends that the claim against such a bond as the one in question is a personal privilege and can not be assigned. In support of this contention its counsel cite certain pretended authorities. Why did they not go further into the matter and cite the decision of this Court? Of course, it was against them and the decision of this Court is certainly binding upon them. We quote from the syllabus:

“The right of laborers and materialmen to enforce the obligation of the sureties on the bond of a contractor for government work, conditioned as required by 28 Stat. 278, c. 280, is

assignable, and passes by an assignment of their claims.”

United States, to Use of Fidelity Nat. Bank of Spokane, Wash., vs. Rundle et al., 100 Fed. 400.

SIX.

THE BOND IS UPON A SUFFICIENT CONSIDERATION.

The contract upon which the action is brought is dated February 17th, 1905. The bond bears date February 27th, 1905. Plaintiff in error urges that upon these facts alone the bond was without consideration. It is true that the record only shows the contract and the bond as set out in the affirmative defense of the answer of plaintiff in error to the complaint and the complaints in intervention, and that the contract by its terms does not provide that a bond should be given as required by the statute. However, this Court has cognizance of the manner in which public contracts are let and that a proposal, general instructions and a statement of conditions are furnished to bidders for their guidance, and a preliminary deposit or guarantee required that if the contract be awarded to the

bidder he will enter into and execute the contract and any bond required by the department under whose supervision the work is performed. In addition, the plain provision of the statute requires that a bond be given.

The awarding of the contract to the contractor was a sufficient consideration between the government and the contractor. The duty of the government to obtain security for the payment of persons furnishing labor and material was a sufficient consideration as between the claimants herein and the government and plaintiff in error; and as between the contractor and the surety the premium charged was undoubtedly an adequate consideration. We further call attention to the fact that while the bond is dated February 27th, 1905, the contract bears an indorsement dated March 2d, 1905, by the Quartermaster of the Army, which tends to show that the contract was not fully accepted by the Quartermaster until that date. (Transcript of Record, p. 122.) Article eleven (11) of the contract provides that it shall be subject to the approval of the Quartermaster General of the United States Army. The date of his approval may, so far as anything appears on the record, have been after February 27th, 1905, the date of the bond.

SEVEN.

THE TAXATION OF COSTS WAS PROPER.

Plaintiff in error cites numerous cases urging that the Court erred in taxing the docket fee to relator and each intervenor. Calling the Court's attention to *Mo. Pac. Ry. Co. vs. Texas & P. Ry. Co.*, 38 Fed. 775, and *Central Trust Co. vs. Wabash Ry. Co.*, 32 Fed. 684, cited by plaintiff in error, these cases show that in each case a receiver had been appointed. The parties claiming the docket fee had filed petitions for the payment of claims in the receivership proceeding and the Court rightfully held that obtaining an order directing the payment of a claim in a pending receivership proceeding was not a final hearing in equity entitling the petitioner or claimant to the statutory docket fee.

We deem it unnecessary to discuss the other cases cited by plaintiff in error under this subdivision. The decision of the Circuit Court of Appeals in "*The Oregon*," 133 Fed. 609, affirming the United States District Court for the District of Washington, is decisive. This was an action by three hundred libelants and fifty-eight intervening libel-

ants against The Oregon in the United States District Court for the District of Washington, and the trial court allowed a proctor's fee of \$10 to each libelant and intervening libelant recovering in the action, notwithstanding that each and every libelant and intervening libelant was represented by the same attorney.

CONCLUSION.

This brief is more extended than we had intended, but the amount in controversy and the questions involved warrant us in placing out views fully before the Court. We have endeavored to cite only those cases in which the facts are similar to those in the case at bar, deeming all cases where there are important differences in the facts which distinguish them from the case at bar should be laid aside without further comment than to say that they are not in point. We contend that the decision of the trial court in this matter was right and that the same should be affirmed.

Respectfully submitted,

IRA BRONSON,

Attorney for Defendants in Error.

Except Crane Co.

TITLE GUARANTY & TRUST COMPANY OF
SCRANTON, PENNSYLVANIA, *v.* CRANE COM-
PANY.

ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT.

No. 67. Argued December 6, 7, 1910.—Decided December 19, 1910.

A vessel being constructed under contract for the United States is a public work within the meaning of the act of August 13, 1894, c. 280, 28 Stat. 278, as amended by the act of February 24, 1905, c. 778, 33 Stat. 811, and materialmen can maintain an action on the bond given pursuant to such statute by the contractor.

Whether a work is public or not, depends on whether it belongs to the representative of the public and not on whether it is or is not attached to the soil.

Where title to the completed portion of a vessel being constructed for the United States passes to the United States as payments are made, laborers and materialmen cannot assert liens under the state law, but can maintain actions on the contractor's bond given under the act of 1894 as amended by the act of 1905. *United States v. Ansonia Brass & Copper Co.*, 218 U. S. 452.

The court will, in the absence of clear and established construction, reach its own conclusion in construing a statute, notwithstanding opinions of the Attorney General looking in the opposite direction. *Held*, in this case, that the suit had been properly brought, and that the United States was not necessarily a party, the suit being begun in the name of the United States to the real plaintiff's use.

Although the plaintiff may not have applied for copy of the bond and filed an affidavit that the labor and materials had been supplied, the defect was formal and not vital as the intervenors had complied with the statute in that respect.

Objections to allowing claimants the benefit of the bond given by the contractor under the act of 1894 as amended by the act of 1905, either because they had a lien or because the service was too remote, if carried to an extreme, would defeat the purpose of the act. Where a bond is under seal consideration is presumed; in this case, although the bond was not executed until ten days after execution

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of the contract which it was given to secure, the transactions may be regarded as simultaneous.

Assignments of claims of materialmen on a public work held in this case not to have affected the remedy of enforcing the same against the surety on the contractor's bond.

In a suit to enforce claims of materialmen against surety on a contractor's bond, each claimant is entitled to a docket fee of \$10.00.

Although the claims are consolidated in a single suit the causes of action are distinct.

163 Fed. Rep. 168, affirmed.

THE facts, which involve the construction of the materialmen's act of August 13, 1894, as amended by the act of February 24, 1905, are stated in the opinion.

Mr. James B. Murphy, with whom *Mr. C. H. Winders* and *Mr. M. M. Richardson* were on the brief, for plaintiff in error:

The purpose of Congress in the passage of the act of August 13, 1894, 28 Stat. 278, as amended February 24, 1905, 33 Stat. 811, was to protect, first, the United States, and, second, to protect laborers and materialmen, who had no right of lien by reason of the building or work being upon the property of or belonging to the sovereign, by giving to them a right of action on the contractor's bond, substituting the bond for the building or public work. *Hill v. American Surety Co.*, 200 U. S. 197; *U. S. F. & G. Co. v. United States*, 191 U. S. 416; *Sica v. Kimpland*, 93 Fed. Rep. 403; *American Surety Co. v. Cement Co.*, 110 Fed. Rep. 717; *United States v. Burgdorf*, 13 App. D. C. 506; *United States v. City Trust & Safe Deposit Co.*, 21 App. D. C. 369; 123 Op. Atty. Genl. 74.

The contract in this case was neither for the erection of a "public building" or the prosecution or completion of any "public work," and further, title to the vessel under the contract not passing to the Government until its completion, delivery and acceptance, the laborer and materialman, under the statutes of the State of Washington, were

amply protected by its lien laws, hence the claims sought to be enforced here are not only without the terms of the act, but outside of the very scope and intent of Congress in its passage. *Clarkson v. Stevens*, 106 U. S. 505; *John B. Ketcham*, No. 2, 97 Fed. Rep. 872; Opinion Atty. Gen. Moody, Aug. 6, 1906. The rule is also announced in *Benjamin on Sales*, 7th ed., 298; *United States v. Ollinger*, 55 Fed. Rep. 959; *Yukon River St. Co. v. Grotto*, 69 Pac. Rep. 252 (Cal.); *William v. Jackson*, 16 Gray, 514; *Green v. Hull*, 1 Houst. 506; *West Jersey Ry. Co. v. Trenton Car Co.*, 32 N. J. Law, 517; *Etna v. Treat*, 15 Ohio St. 585; *Andrews v. Durant*, 11 N. Y. 35; *S. C.*, 62 Am. Dec. 55; *Hawes & Co. v. Trigg Co.*, 65 S. E. Rep. 538.

Title to the vessel not passing to the United States until delivery and acceptance by it, under § 5953, Ballinger, Washington Code, as amended by the Laws of 1901, p. 21, the plaintiff and intervenors herein had a right of lien upon the vessel.

Where under general principles of law there is a lien there is no right of action on the bond. *United States v. Hyatt*, 92 Fed. Rep. 442; *American Surety Co. v. Lawrenceville Cement Co.*, 110 Fed. Rep. 717; *Laughlin Co. v. Morgan*, 111 Fed. Rep. 474; *Laughlin Co. v. American Surety Co.*, 114 Fed. Rep. 627; *Bayne v. United States*, 93 U. S. 643; note 29 L. R. A. 226; *United States v. McGee et al.*, 171 Fed. Rep. 209; *Surety Co. v. Guarantee Co.*, 174 Fed. Rep. 385.

Defendants in error having a right of lien, being fully protected thereby, are wholly without the scope and intent of the act. Claimants are also clearly estopped from asserting any claim as against the bond.

The Puget Sound Engine Works having been adjudged a bankrupt prior to the institution of this action, under § 3466, Rev. Stat., claims due the United States in such cases are given preference. *In re Stover*, 127 Fed. Rep. 394; *Smith v. United States*, 92 U. S. 618; *In re Huddell*,

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47 Fed. Rep. 206; *United States v. Barnes*, 31 Fed. Rep. 705; *In re Strassburger*, 4 Wood, 558; S. C., Fed. Cas. No. 13.

The mere fact that the Government might hold collateral or security does not require it to resort thereto before enforcing its direct remedy. Cases *supra* and *Chemical National Bank v. Armstrong*, 59 Fed. Rep. 375; *Merrill v. National Bank*, 173 U. S. 140; *Childs v. N. P. Carlston Co.*, 76 Fed. Rep. 86; *Doe v. N. W. Coal & Trans. Co.*, 78 Fed. Rep. 62; *Wheeler v. Walton &c. Ry. Co.*, 72 Fed. Rep. 967; *Levey Bros. v. Chicago Nat. Bank*, 42 N. E. Rep. 131; *Storey*, Eq. Jurisp., § 614.

If the surety pays the debt of the Government, it is entitled to be subrogated to its preference right. *Beaston v. Delaware Bank*, 12 Pet. 102; *Hunter v. United States*, 5 Pet. 172; *Field v. United States*, 9 Pet. 182; *In re Huddell*, 47 Fed. Rep. 206; *United States v. Barnes*, 31 Fed. Rep. 705; Federal Cases, Nos. 7843, 7731, 9682, 17,668.

The contract for building the vessel was not only without the scope of the act, but also without its express terms. A vessel is not a public work. That term "public works" includes only fixed works and does not include a sea-going vessel. *Penn Iron Co. v. Trigg*, 56 S. E. Rep. 329; *Hawes v. Trigg Co.*, 65 S. E. Rep. 538; *United States v. Perth Amboy Shipping Co.*, 137 Fed. Rep. 689; 23 Am. & Eng. Ency. of Law, 2d ed., 459; *United States v. Ollinger*, 55 Fed. Rep. 959; *Ellis v. Grand Rapids*, 123 Michigan, 567; S. C., 82 N. W. Rep. 244; *Winters v. Duluth*, 82 Minnesota, 130; S. C., 84 N. W. Rep. 788; 23 Op. Atty. Genl. 174; 20 Op. of Atty. Genl. 454; Op. Solicitor General Hoyt, approved by Attorney General Moody, August 3, 4, 1906.

The United States should be made a party in case of the insolvency of one engaged in the performance of a contract entered into with the United States Government.

The claim of the Government is prior and paramount to that of all other creditors, and general statutes of limitation do not cut off the Government from asserting its claim. § 3466, Rev. Stat. 2314; *In re Stover*, 127 Fed. Rep. 394; *Smith v. United States*, 92 U. S. 618; *In re Hubbell*, 47 Fed. Rep. 206; *United States v. Barnes*, 31 Fed. Rep. 705; *In re Strassburger*, 4 Wood, 558; S. C., Fed. Cas. No. 13; *Bain v. United States*, 93 U. S. 643; *United States v. McGee et al.*, 171 Fed. Rep. 209; *Hill v. American Surety Co.*, 200 U. S. 197.

The statute provides that this suit can only be instituted upon the performance of certain conditions, which have not been complied with. *United States v. Freeman*, 3 How. 556.

No affidavit was filed by the plaintiff or by intervenors, and no certified copy of the bond procured, and this action was not based upon a certified copy of such bond. Even if valid, the bond is not liable for cartage, towage, wharfage and patterns from which castings are made. *United States v. Hyatt*, 92 Fed. Rep. 442; S. C., 34 C. C. A. 445; *McAllister v. Fidelity & Deposit Co.*, 83 N. Y. Supp. 752; *McLaughlin v. Surety Co.*, 114 Fed. Rep. 627; *Laughlin Co. v. Morgan*, 111 Fed. Rep. 474; *Am. Surety Co. v. Cement Co.*, 110 Fed. Rep. 717; *Rhine v. Guilfoil*, 13 Washington, 373; *Webster v. Real Estate Imp. Co.*, 6 N. E. Rep. 71; *Wilson v. Nugent*, 57 Pac. Rep. 1008 (Cal.); *United States v. Morgan*, 111 Fed. Rep. 474; *United States v. Conkling*, 135 Fed. Rep. 508.

Many of the claims are not claims for material or for labor entering into and becoming a part of the public work, and are not such claims as are contemplated by the statute. *Standard Oil Co. v. Trust Co.*, 21 App. D. C. 639; *United States v. City Trust Co.*, 23 App. D. C. 153; *United States v. Mehl*, 25 Kansas, 205; *Basshor v. B. & O. Ry. Co.*, 65 Maryland, 99; *United States v. Kimpland*, 93 Fed. Rep. 403; *United States v. Simon*, 98 Fed. Rep. 73;

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Central Trust Co. v. Texas & St. L. Ry. Co., 27 Fed. Rep. 178.

The claim against the bond in question is a personal privilege and cannot be assigned, and if assigned the assignee has no right of action upon the bond. 20 Am. & Eng. Ency. of Law, 2d ed., 471; 1 Jones on Liens, §§ 982, 990; *Horton v. Sparkman*, 2 Washington, 165.

The giving of the bond was without consideration. Brandt on Suretyship, 3d ed., § 764; *Building Asso. v. Kleinhoffer*, 40 Mo. App. 388; *Ring v. Kelly*, 10 Mo. App. 411. An attorney's fee cannot be taxed to each individual laborer and materialman. Their several appearances in the Circuit Court is not brought about by any fault or default on the part of the surety. *Missouri Pacific Ry. Co. v. Texas & P. Ry. Co.*, 38 Fed. Rep. 775; see also *Central Trust Co. v. Wabash Ry. Co.*, 32 Fed. Rep. 684.

Only one docket fee is allowable. *Barron v. Mt. Eden*, 87 Fed. Rep. 483; *Aiken v. Smith*, 57 Fed. Rep. 423; *Gorse v. Parker*, 36 Fed. Rep. 840.

Mr. Ira Bronson for defendants in error:

A public vessel is a public work within the meaning of the statute. *Hill v. Am. Surety Co.*, 200 U. S. 197; *Standard Furniture Co. v. Henningsen*, 82 Pac. Rep. 171; *Annisston Pipe Co. v. Surety Co.*, 92 Fed. Rep. 551.

A narrow view of the statute, supported only by the opinions of Attorneys General, would place the construction of the work described in the contract without the purview of the statute.

As to what is a "public work" within the meaning of the statute, see *United States v. Shipbuilding Co.*, 137 Fed. Rep. 689; as to shore protections, *United States v. Farley*, 91 Fed. Rep. 474; dry dock, *United States v. Freel*, 92 Fed. Rep. 299; jetty, *United States v. Hyatt*, 92 Fed. Rep. 442; wharf and pier, *United States v. Kimpland*, 93 Fed. Rep. 403; lock in river, *United States v. Sheridan*, 119

Fed. Rep. 236; *United States v. American Surety Co.*, 127 Fed. Rep. 490; *United States v. Morgan*, 11 Fed. Rep. 476; *United States v. Jefferson*, 60 Fed. Rep. 736.

Under the contract laborers and materialmen are not protected by state lien laws. *The Poconoket*, 67 Fed. Rep. 262; aff'd by 70 Fed. Rep. 640; 168 U. S. 707; *United States v. Heaton*, 128 Fed. Rep. 417; *Insley v. Garside*, 121 Fed. Rep. 699.

Relators and intervenors are within the terms of the statute, and the Circuit Court had jurisdiction of the suit.

The contract was within the scope of the act and within its express terms. The materials and labor required were within the terms of the contract. Plaintiff in error entered into the engagement under the statute and is now estopped to deny liability. *Standard Furniture Co. v. Henningsen*, 82 Pac. Rep. 171.

The United States should not have been made a party; nor is an application by affidavit to the department under whose direction the work is performed a condition precedent to bringing suit. *United States v. Hegeman*, 21 Pa. Super. Ct. 459.

All the claims are within the purview of the contract and bond. *Am. Surety Co. v. Cement Co.*, 110 Fed. Rep. 717. The object of this statute is the protection of those furnishing labor and material for the construction of public work. It would be a narrow construction of the statute, too narrow in fact to attain its primary object, if any of these claims should be held without the purview of the statute.

The claims of laborers and materialmen are assignable under the act and the assignment does not defeat a recovery. *Fidelity Nat. Bank v. Rundle*, 100 Fed. Rep. 400. The bond is upon a sufficient consideration, and the taxation of costs was proper. *The Oregon*, 133 Fed. Rep. 609.

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MR. JUSTICE HOLMES delivered the opinion of the court.

This is an action brought under the Act of August 13, 1894, c. 280, 28 Stat. 278, as amended by the Act of February 24, 1905, c. 778, 33 Stat. 811, upon a bond given to the United States as required by that act. The contract to secure which the bond was given was a contract by the Puget Sound Engine Works to build and deliver a single screw wooden steamer for the United States, and the main question in the case is whether the statute applies to a contract for such a chattel. If not, parties like the plaintiffs, who furnished labor or materials for the work, have no standing to maintain the suit. We proceed, as soon as may be, to dispose of that question, leaving details and minor objections to be taken up later in turn. It was raised by demurrer to the declaration and subsequently by what was entitled an affirmative defence pleaded by the surety and a demurrer by the plaintiffs. The decision was for the plaintiffs against the surety in the Circuit Court of Appeals. 163 Fed. Rep. 168; S. C., 89 C. C. A. 618.

The amended statute requires any person "entering into a formal contract with the United States for the construction of any public building, or the prosecution and completion of any public work, or for repairs upon any public building or public work," "to execute the usual penal bond . . . with the additional obligation that such contractor or contractors shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work." It gives any person who has furnished labor or materials used in the construction or repair of any public work, which have not been paid for, the right to intervene in a suit upon the bond. In short, besides securing the United States, the act is intended to protect persons furnishing materials or labor "for the construction of public works," as the title

declares. The question narrows itself accordingly to whether the steamer was 'a public work' within the meaning of the words as used.

As a preliminary to the answer it is relevant to mention that by Article 3 of the contract partial payments are provided for as the "labor and material furnished" equal certain percentages of the total, and that by Article 4 "the portion of the vessel completed and paid for under said method of partial payments shall become the property of the United States," although the contractor remains responsible for the care of the portion paid for, and by Article 2 there is to be a final test of the vessel when completed. The vessel has been built and accepted, and is now in possession of the United States. Notwithstanding these facts, it was argued that the statute did not apply to the contract, because the laborers and materialmen had a lien by the state law; and that, even if the statute applied, they had lost their rights by not asserting them before the delivery of the vessel, as before that, it is said, the title did not pass to the United States. Among other things this ended the right to subrogation that the surety might have claimed. But the very recent decision in *United States v. Ansonia Brass & Copper Co.*, 218 U. S. 452, establishes that the title to the completed portion of the vessel passed, as provided in Article 4, and that the laborers and materialmen could not have asserted the lien supposed to exist.

The case cited shows therefore that such claimants are within the policy of the statute. It also contains a strong intimation that they are within the meaning of its words. For it refers to the statute and says that it was in recognition of the inability of such persons to take liens upon the public property of the United States that Congress passed the act, and adds that in view of this purpose to provide protection for those who could not protect themselves the statute has been given liberal construction by this court.

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See also *Hill v. American Surety Co.*, 200 U. S. 197. The reference and comment when the attempt was made to enforce a lien under state laws would have had no relevance unless they had been intended to point out the true remedy available in such a case. The argument that the vessel was not a public work loses most of its force when it appears that the title was in the United States as soon as the first payment was made. Of course public works usually are of a permanent nature and that fact leads to a certain degree of association between the notion of permanence and the phrase. But the association is only empirical, not one of logic. Whether a work is public or not does not depend upon its being attached to the soil; if it belongs to the representative of the public it is public, and we do not think that the arbitrary association that we have mentioned amounts to a coalescence of the more limited idea with speech, so absolute that we are bound to read 'any public work' as confined to work on land. It is not necessary to discuss in detail some opinions from the Attorney General's office in cases where the title to the vessel did not pass that looked rather in the opposite direction. It is enough to say that there has been no such clear and established construction as to cause us to yield our own view. On the other hand, the decision of some other courts has been in accord with the judgment below and with what we now decide. *United States v. Perth Amboy Shipbuilding & Engineering Co.*, 137 Fed. Rep. 689, 693. *American Surety Co. v. Lawrenceville Cement Co.*, 110 Fed. Rep. 717, 719. *United States v. Aetna Indem. Co.*, 40 Washington, 87.

Another defence, set up in the same manner as the first, is that the United States should have been made a party, and, in connection with this, a further one that the suit cannot be maintained unless the plaintiff has applied, as provided in the statute, for a copy of the bond, and furnished an affidavit that labor or materials have been sup-

plied by him for the prosecution of the work. The latter is the more substantial, as, of course, the suit was begun in the name of the United States to the real plaintiffs' use. But the objection is not serious in either form. No suit had been brought by the United States for more than six months from the completion of the work, affidavits were made and copies filed by intervenors, and in the circumstances the omission was only a formal defect. The language of the statute that after giving the affidavit the party should be furnished with a certified copy of the contract and bond, "upon which he or they shall have a right of action," etc., may be read as meaning 'upon which bond' as easily as 'upon doing which,' and hardly can be construed as making a condition precedent. The conditions are attached in the form of provisos by later words.

Next it is objected that certain claimants are not entitled to the benefit of the bond, either because they had a lien or because the service was too remote. Of the former class are claims for cartage and towage to the spot where the work was going on. We agree with Judge Putnam in *American Surety Co. v. Lawrenceville Cement Co.*, 110 Fed. Rep. 717, that in these small matters the objection if carried to an extreme would defeat the purpose of the statute, that such liens ordinarily are not insisted upon, and that it would be unreasonable to let the statute 'interfere with the convenience of minor dealings in such methods as the usual practices establish.' Of the other class are the claims for patterns furnished to the moulding department of the Puget Sound Engine Works. As was said by the judge below, those who furnish the patterns have as fair a claim to be protected as those who erect the scaffolding upon which the carpenters stand in doing their work upon the ship.

Next it is said that the bond was without consideration because the contract was made on February 17, and the bond not executed until February 27, ten days later. But

the transactions may be regarded as simultaneous in a practical sense, and the bond being under seal, consideration is presumed.

The assignment of some of the claims did not affect the remedy. *United States v. Rundle*, 100 Fed. Rep. 400.

The allowance of a docket fee of \$10 to each claimant appears to us to be correct. Rev. Stat., § 824. The claims are several and represent distinct causes of action in different parties, although consolidated in a single suit.

Judgment affirmed.